

RECODIFICATION OF NATURAL RESOURCES**PROVISIONS**

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends and enacts provisions relating to natural resources.

Highlighted Provisions:

This bill:

- ▶ creates Title 79, Natural Resources;
- ▶ renumbers and amends certain chapters from Title 63, State Affairs in General;
- ▶ enacts and repeals sections;
- ▶ defines terms; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 11-38-302**, as last amended by Laws of Utah 2005, Chapter 138
- 23-14-2**, as last amended by Laws of Utah 2002, Chapter 176
- 40-6-2**, as last amended by Laws of Utah 1992, Chapter 34
- 40-6-4**, as last amended by Laws of Utah 2002, Chapter 176
- 40-6-15**, as enacted by Laws of Utah 1983, Chapter 205
- 40-6-17**, as enacted by Laws of Utah 1983, Chapter 205
- 40-6-19**, as last amended by Laws of Utah 2002, Chapter 256
- 40-8-4**, as last amended by Laws of Utah 2008, Chapter 382
- 40-8-6**, as last amended by Laws of Utah 2008, Chapter 382
- 40-10-27**, as last amended by Laws of Utah 1997, Chapter 135

- 32 **54-17-701**, as enacted by Laws of Utah 2008, Chapter 374
- 33 **59-5-101**, as last amended by Laws of Utah 2008, Chapter 382
- 34 **59-12-103 (Effective 01/01/09)**, as last amended by Laws of Utah 2008, Second
- 35 Special Session, Chapter 5
- 36 **59-23-4**, as last amended by Laws of Utah 2005, Chapter 16
- 37 **63A-5-204**, as last amended by Laws of Utah 2008, Chapter 382
- 38 **63A-5-222**, as last amended by Laws of Utah 2008, Chapter 250
- 39 **63B-4-201**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **63G-2-206**, as last amended by Laws of Utah 2008, Chapter 95 and renumbered and
- 41 amended by Laws of Utah 2008, Chapter 382
- 42 **63G-2-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 43 **63J-4-502**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 44 **65A-1-1**, as last amended by Laws of Utah 1996, Chapter 159
- 45 **65A-1-2**, as last amended by Laws of Utah 1996, Chapter 159
- 46 **65A-1-3**, as last amended by Laws of Utah 1996, Chapters 159 and 243
- 47 **65A-1-4**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **65A-8-302**, as renumbered and amended by Laws of Utah 2007, Chapter 136
- 49 **72-5-203**, as last amended by Laws of Utah 2008, Chapter 382
- 50 **73-10-2**, as last amended by Laws of Utah 2003, Chapter 131
- 51 **73-10c-2**, as last amended by Laws of Utah 2007, Chapter 142
- 52 **78A-3-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 53 **78A-4-103**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 ENACTS:

- 55 **79-1-101**, Utah Code Annotated 1953
- 56 **79-1-102**, Utah Code Annotated 1953
- 57 **79-2-101**, Utah Code Annotated 1953
- 58 **79-2-102**, Utah Code Annotated 1953
- 59 **79-2-302**, Utah Code Annotated 1953

60 RENUMBERS AND AMENDS:

- 61 **79-2-201**, (Renumbered from 63-34-3, as last amended by Laws of Utah 1996, Chapter
- 62 159)

63 **79-2-202 (Contingently Effective)**, (Renumbered from 63-34-5 (Contingently
64 Effective), as last amended by Laws of Utah 2008, Chapter 382)
65 **79-2-202 (Contingently Superseded)**, (Renumbered from 63-34-5 (Contingently
66 Superseded), as last amended by Laws of Utah 2003, Chapter 144)
67 **79-2-203**, (Renumbered from 63-34-4, as last amended by Laws of Utah 2002, Chapter
68 176)
69 **79-2-204**, (Renumbered from 63-34-6, as last amended by Laws of Utah 2008, Chapter
70 250)
71 **79-2-205**, (Renumbered from 63-34-3.1, as last amended by Laws of Utah 2008,
72 Chapter 382)
73 **79-2-301**, (Renumbered from 63-34-8, as last amended by Laws of Utah 1983, Chapter
74 318)
75 **79-2-303**, (Renumbered from 63-34-14, as last amended by Laws of Utah 2005,
76 Chapter 71)
77 **79-2-304**, (Renumbered from 63-34-20, as enacted by Laws of Utah 2006, Chapter 35)
78 **79-2-305 (Contingently Effective)**, (Renumbered from 63-34-3.2 (Contingently
79 Effective), as enacted by Laws of Utah 2002, Chapter 142)
80 **79-2-306 (Contingently Effective)**, (Renumbered from 63-34-3.3 (Contingently
81 Effective), as enacted by Laws of Utah 2002, Chapter 142)
82 **79-2-401**, (Renumbered from 63-34-9, as enacted by Laws of Utah 1981, Chapter 186)
83 **79-2-402**, (Renumbered from 63-34-15, as last amended by Laws of Utah 2008,
84 Chapter 382)
85 **79-2-403**, (Renumbered from 63-34-21, as enacted by Laws of Utah 2008, Chapters
86 203 and 203)

87 REPEALS:

88 **63-34-1**, as enacted by Laws of Utah 1967, Chapter 176
89 **63-34-7**, as last amended by Laws of Utah 1969, Chapter 198
90 **63-34-10**, as enacted by Laws of Utah 1981, Chapter 186
91 **63-34-11**, as last amended by Laws of Utah 1999, Chapter 236
92 **63-34-12**, as last amended by Laws of Utah 2006, Chapter 139

93 **63-34-16**, as renumbered and amended by Laws of Utah 2003, Chapter 16

94 **63-34-17**, as last amended by Laws of Utah 2008, Chapter 382

95 **63-34-18**, as renumbered and amended by Laws of Utah 2003, Chapter 16

96 **63-34-19**, as renumbered and amended by Laws of Utah 2003, Chapter 16

97

98 *Be it enacted by the Legislature of the state of Utah:*

99 Section 1. Section **11-38-302** is amended to read:

100 **11-38-302. Use of money in fund -- Criteria -- Administration.**

101 (1) Subject to Subsection (2), the commission may authorize the use of money in the
102 fund, by grant or loan, to:

103 (a) a local entity;

104 (b) the Department of Natural Resources created under Section [~~63-34-3~~] 79-2-201;

105 (c) the Department of Agriculture and Food created under Section 4-2-1; or

106 (d) a charitable organization that qualifies as being tax exempt under Section 501(c)(3)
107 of the Internal Revenue Code.

108 (2) (a) The money in the fund shall be used for preserving or restoring open land and
109 agricultural land.

110 (b) (i) Except as provided in Subsection (2)(b)(ii), money from the fund may not be
111 used to purchase a fee interest in real property in order to preserve open land or agricultural
112 land, but may be used to establish a conservation easement under Title 57, Chapter 18, Land
113 Conservation Easement Act, or to fund similar methods to preserve open land or agricultural
114 land.

115 (ii) Notwithstanding Subsection (2)(b)(i), money from the fund may be used to
116 purchase a fee interest in real property to preserve open land or agricultural land if:

117 (A) the parcel to be purchased is no more than 20 acres in size; and

118 (B) with respect to a parcel purchased in a county in which over 50% of the land area is
119 publicly owned, real property roughly equivalent in size and located within that county is
120 contemporaneously transferred to private ownership from the governmental entity that
121 purchased the fee interest in real property.

122 (iii) Eminent domain may not be used or threatened in connection with any purchase
123 using money from the fund.

(iv) A parcel of land larger than 20 acres in size may not be divided into separate parcels smaller than 20 acres each to meet the requirement of Subsection (2)(b)(ii).

(c) A county, city, town, department, or organization under Subsection (1) may not receive money from the fund unless it provides matching funds equal to or greater than the amount of money received from the fund.

(d) In loaning or granting money from the fund, the commission may impose conditions on the recipient as to how the money is to be spent.

(e) The commission shall give priority to requests from the Department of Natural Resources for up to 20% of each annual increase in the amount of money in the fund if the money is used for the protection of wildlife or watershed.

(f) (i) The commission may not make a grant or loan from the fund that exceeds \$1,000,000 until after making a report to the Legislative Management Committee about the grant or loan.

(ii) The Legislative Management Committee may make a recommendation to the commission concerning the intended grant or loan, but the recommendation is not binding on the commission.

(3) (a) If money from the fund is distributed in the form of a loan, the commission may require interest to be paid and shall establish other terms of each loan, including a repayment schedule.

(b) Each payment on a loan from the fund shall be returned to the fund and shall be applied first to interest and then to principal.

(4) In determining the amount and type of financial assistance to provide an entity, department, or organization under Subsection (1) and subject to Subsection (2)(f), the commission:

(a) if the assistance is in the form of a loan, shall consider the borrower's ability to repay the loan; and

(b) shall consider:

(i) the nature and amount of open land and agricultural land proposed to be preserved or restored;

(ii) the qualities of the open land and agricultural land proposed to be preserved or restored;

(iii) the cost effectiveness of the project to preserve or restore open land or agricultural land;

(iv) the funds available;

(v) the number of actual and potential applications for financial assistance and the amount of money sought by those applications;

(vi) the open land preservation plan of the local entity where the project is located and the priority placed on the project by that local entity;

(vii) the effects on housing affordability and diversity; and

(viii) whether the project protects against the loss of private property ownership.

(5) If a county, city, town, department, or organization under Subsection (1) seeks money from the fund for a project whose purpose is to protect critical watershed, the commission shall require that the needs and quality of that project be verified by the state engineer.

(6) Each interest in real property purchased with money from the fund shall be held and administered by the state or a local entity.

Section 2. Section **23-14-2** is amended to read:

23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum -- Meetings -- Per diem and expenses.

(1) There is created a Wildlife Board which shall consist of seven members appointed by the governor with the consent of the Senate.

(2) (a) ~~[The]~~ In addition to the requirements of Section 79-2-203, the members of the board shall have expertise or experience in at least one of the following areas:

(i) wildlife management or biology;

(ii) habitat management, including range or aquatic;

(iii) business, including knowledge of private land issues; and

(iv) economics, including knowledge of recreational wildlife uses.

(b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at least one member of the Wildlife Board.

(3) (a) The governor shall select each board member from a list of nominees submitted by the nominating committee pursuant to Section 23-14-2.5.

(b) No more than two members shall be from a single wildlife region described in

186 Subsection 23-14-2.6(1).

187 (c) The governor may request an additional list of at least two nominees from the
188 nominating committee if the initial list of nominees for a given position is unacceptable.

189 (d) (i) If the governor fails to appoint a board member within 60 days after receipt of
190 the initial or additional list, the nominating committee shall make an interim appointment by
191 majority vote.

192 (ii) The interim board member shall serve until the matter is resolved by the committee
193 and the governor or until the board member is replaced pursuant to this chapter.

194 (4) (a) Except as required by Subsection (4)(b), as terms of current board members
195 expire, the governor shall appoint each new member or reappointed member to a six-year term.

196 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
197 time of appointment or reappointment, adjust the length of terms to ensure that:

198 (i) the terms of board members are staggered so that approximately 1/3 of the board is
199 appointed every two years; and

200 (ii) members serving from the same region have staggered terms.

201 (c) If a vacancy occurs, the nominating committee shall submit two names, as provided
202 in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for
203 the unexpired term.

204 (d) Board members may serve only one term unless:

205 (i) the member is among the first board members appointed to serve four years or less;

206 or

207 (ii) the member filled a vacancy under Subsection (4)(c) for four years or less.

208 (5) (a) The board shall elect a chair and a vice chair from its membership.

209 (b) Four members of the board shall constitute a quorum.

210 (c) The director of the Division of Wildlife Resources shall act as secretary to the
211 board but shall not be a voting member of the board.

212 (6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year
213 to expeditiously conduct its business.

214 (b) Meetings may be called by the chair upon five days notice or upon shorter notice in
215 emergency situations.

216 (c) Meetings may be held at the Salt Lake City office of the Division of Wildlife

217 Resources or elsewhere as determined by the Wildlife Board.

218 (7) (a) (i) Members who are not government employees shall receive no compensation
219 or benefits for their services, but may receive per diem and expenses incurred in the
220 performance of the member's official duties at the rates established by the Division of Finance
221 under Sections 63A-3-106 and 63A-3-107.

222 (ii) Members may decline to receive per diem and expenses for their service.

223 (b) (i) State government officer and employee members who do not receive salary, per
224 diem, or expenses from their agency for their service may receive per diem and expenses
225 incurred in the performance of their official duties from the board at the rates established by the
226 Division of Finance under Sections 63A-3-106 and 63A-3-107.

227 (ii) State government officer and employee members may decline to receive per diem
228 and expenses for their service.

229 (8) (a) The members of the Wildlife Board shall complete an orientation course to
230 assist them in the performance of the duties of their office.

231 (b) The Department of Natural Resources shall provide the course required under
232 Subsection (8)(a).

233 Section 3. Section **40-6-2** is amended to read:

234 **40-6-2. Definitions.**

235 For the purpose of this chapter:

236 (1) "Board" means the Board of Oil, Gas, and Mining.

237 (2) "Correlative rights" means the opportunity of each owner in a pool to produce his
238 just and equitable share of the oil and gas in the pool without waste.

239 (3) "Condensate" means hydrocarbons, regardless of gravity, that:

240 (a) occur naturally in the gaseous phase in the reservoir; and

241 (b) are separated from the natural gas as liquids through the process of condensation
242 either in the reservoir, in the wellbore, or at the surface in field separators.

243 (4) "Consenting owner" means an owner who consents in advance to the drilling and
244 operation of a well and agrees to bear his proportionate share of the costs of the drilling and
245 operation of the well.

246 (5) "Crude oil" means hydrocarbons, regardless of gravity, that:

247 (a) occur naturally in the liquid phase in the reservoir; and

248 (b) are produced and recovered at the wellhead in liquid form.

249 (6) (a) "Gas" means natural gas, as defined in Subsection (9), natural gas liquids, as
250 defined in Subsection (10), other gas, as defined in Subsection (14), or any mixture of them.

251 (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil
252 shale, or tar sands.

253 (7) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well
254 within the state in violation of this chapter or any rule or order of the board.

255 (8) "Illegal product" means any product derived in whole or in part from illegal oil or
256 illegal gas.

257 (9) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in
258 the reservoir and are produced and recovered at the wellhead in gaseous form, except natural
259 gas liquids as defined in Subsection (10) and condensate as defined in Subsection (3).

260 (b) "Natural gas" includes coalbed methane gas.

261 (10) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated
262 from natural gas as liquids in gas processing plants through the process of condensation,
263 absorption, adsorption, or other methods.

264 (11) "Nonconsenting owner" means an owner who after written notice does not consent
265 in advance to the drilling and operation of a well or agree to bear his proportionate share of the
266 costs.

267 (12) (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in
268 Subsection (3), or any mixture of them.

269 (b) "Oil" does not include any gaseous or liquid substance processed from coal, oil
270 shale, or tar sands.

271 (13) (a) "Oil and gas proceeds" means any payment that:

272 (i) derives from oil and gas production from any well located in the state;

273 (ii) is expressed as a right to a specified interest in the:

274 (A) cash proceeds received from the sale of the oil and gas; or

275 (B) the cash value of the oil and gas; and

276 (iii) is subject to any tax withheld from the payment pursuant to law.

277 (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest,
278 production payment interest, or working interest.

(c) "Oil and gas proceeds" does not include a net profits interest or other interest the extent of which cannot be determined with reference to a specified share of:

- (i) the cash proceeds received from the sale of the oil and gas; or
- (ii) the cash value of the oil and gas.

(14) (a) "Other gas" means nonhydrocarbon gases that:

- (i) occur naturally in the gaseous phase in the reservoir; or
- (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

(b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.

(15) "Owner" means the person who has the right:

- (a) to drill into and produce from a reservoir; and
- (b) appropriate the oil and gas produced for himself or for himself and others.

(16) "Operator" means the person who has been designated by the owners or the board to operate a well or unit.

(17) "Payor" means the person who undertakes to distribute oil and gas proceeds to the persons entitled to them, whether as the first purchaser of that production, as operator of the well from which the production was obtained, or as lessee under the lease on which royalty is due.

(18) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."

(19) "Pooling" means the bringing together of separately owned interests for the common development and operation of a drilling unit.

(20) "Producer" means the owner or operator of a well capable of producing oil and gas.

(21) "Product" means any commodity made from oil and gas.

(22) "Waste" means:

- (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;

- (b) the inefficient storing of oil or gas;

(c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes:

(i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations;

(ii) unnecessary wells to be drilled; or

(iii) the loss or destruction of oil or gas either at the surface or subsurface; or

(d) the production of oil or gas in excess of:

(i) transportation or storage facilities; or

(ii) the amount reasonably required to be produced as a result of the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

Section 4. Section **40-6-4** is amended to read:

40-6-4. Board of Oil, Gas, and Mining created -- Functions -- Appointment of members -- Terms -- Chair -- Quorum -- Expenses.

(1) There is created within the Department of Natural Resources the Board of Oil, Gas, and Mining. The board shall be the policy making body for the Division of Oil, Gas, and Mining.

(2) The board shall consist of seven members appointed by the governor with the consent of the Senate. No more than four members shall be from the same political party.

[The] In addition to the requirements of Section 79-2-203, the members shall have the following qualifications:

(a) two members knowledgeable in mining matters;

(b) two members knowledgeable in oil and gas matters;

(c) one member knowledgeable in ecological and environmental matters;

(d) one member who is a private land owner, owns a mineral or royalty interest and is knowledgeable in those interests; and

(e) one member who is knowledgeable in geological matters.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the

time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the consent of the Senate.

(b) The person appointed shall have the same qualifications as his predecessor.

(5) The board shall appoint its chair from the membership. Four members of the board shall constitute a quorum for the transaction of business and the holding of hearings.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

Section 5. Section **40-6-15** is amended to read:

40-6-15. Division created -- Functions -- Director of division -- Qualifications of program administrators.

There is created within the Department of Natural Resources the Division of Oil, Gas, and Mining. The division shall implement the policies and orders of the board and perform all other duties delegated by the board.

The director of the Division of Oil, Gas, and Mining shall be appointed by the director of the Department of Natural Resources with the concurrence of the Board of Oil, Gas, and Mining. The director shall be the executive and administrative head of the Division of Oil, Gas, and Mining and shall be a person experienced in administration and knowledgeable in the extraction of oil, gas, and minerals.

Within the division, the person administering the oil and gas program shall have the

technical background to efficiently administer that program. The person administering the mining program shall have the technical background to efficiently administer that program.

Section 6. Section **40-6-17** is amended to read:

40-6-17. Cooperative research and development projects.

The board and the Division of Oil, Gas, and Mining are authorized to enter into cooperative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the Legislature.

Section 7. Section **40-6-19** is amended to read:

40-6-19. Bond and Surety Forfeiture Trust Fund created -- Contents -- Use of fund monies.

(1) There is created a private-purpose trust fund known as the "Bond and Surety Forfeiture Trust Fund."

(2) Monies collected by the Division of Oil, Gas, and Mining as a result of bond or surety forfeitures shall be deposited in the fund.

(3) Interest earned on monies in the fund shall accrue to the fund.

(4) (a) Money from each forfeited bond or surety, together with interest, shall be used by the Division of Oil, Gas, and Mining to accomplish the requisite performance standards under the program to which the forfeited bond or surety corresponds.

(b) Any money not used for a project shall be returned to the rightful claimant.

Section 8. Section **40-8-4** is amended to read:

40-8-4. Definitions.

As used in this chapter:

(1) "Adjudicative proceeding" means:

(a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or

(b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

(2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.

(3) (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13.

(b) An approved notice of intention is not required for small mining operations.

(4) "Board" means the Board of Oil, Gas, and Mining.

(5) "Conference" means an informal adjudicative proceeding conducted by the division or board.

(6) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.

(b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.

(7) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(8) "Division" means the Division of Oil, Gas, and Mining.

(9) "Emergency order" means an order issued by the board in accordance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(10) (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.

(b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and

434 operating other facilities related to these activities.

435 (11) "Hearing" means a formal adjudicative proceeding conducted by the board under
436 its procedural rules.

437 (12) (a) "Imminent danger to the health and safety of the public" means the existence
438 of a condition or practice, or a violation of a permit requirement or other requirement of this
439 chapter in a mining operation, which condition, practice, or violation could reasonably be
440 expected to cause substantial physical harm to persons outside the permit area before the
441 condition, practice, or violation can be abated.

442 (b) A reasonable expectation of death or serious injury before abatement exists if a
443 rational person, subjected to the same conditions or practices giving rise to the peril, would not
444 expose himself or herself to the danger during the time necessary for abatement.

445 (13) (a) "Land affected" means the surface and subsurface of an area within the state
446 where mining operations are being or will be conducted, including, but not limited to:

447 (i) on-site private ways, roads, and railroads;

448 (ii) land excavations;

449 (iii) exploration sites;

450 (iv) drill sites or workings;

451 (v) refuse banks or spoil piles;

452 (vi) evaporation or settling ponds;

453 (vii) stockpiles;

454 (viii) leaching dumps;

455 (ix) placer areas;

456 (x) tailings ponds or dumps; and

457 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

458 (b) All lands shall be excluded from the provisions of Subsection (13)(a) that would:

459 (i) be includable as land affected, but which have been reclaimed in accordance with an
460 approved plan, as may be approved by the board; and

461 (ii) lands in which mining operations have ceased prior to July 1, 1977.

462 (14) (a) "Mining operation" means activities conducted on the surface of the land for
463 the exploration for, development of, or extraction of a mineral deposit, including, but not
464 limited to, surface mining and the surface effects of underground and in situ mining, on-site

465 transportation, concentrating, milling, evaporation, and other primary processing.

466 (b) "Mining operation" does not include:

467 (i) the extraction of sand, gravel, and rock aggregate;

468 (ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division
469 of Oil, Gas, and Mining;

470 (iii) the extraction of geothermal steam;

471 (iv) smelting or refining operations;

472 (v) off-site operations and transportation;

473 (vi) reconnaissance activities; or

474 (vii) activities which will not cause significant surface resource disturbance or involve
475 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

476 (15) "Notice" means:

477 (a) notice of intention, as defined in this chapter; or

478 (b) written information given to an operator by the division describing compliance
479 conditions at a mining operation.

480 (16) "Notice of intention" means a notice to commence mining operations, including
481 revisions to the notice.

482 (17) "Off-site" means the land areas that are outside of or beyond the on-site land.

483 (18) (a) "On-site" means the surface lands on or under which surface or underground
484 mining operations are conducted.

485 (b) A series of related properties under the control of a single operator, but separated
486 by small parcels of land controlled by others, will be considered to be a single site unless an
487 exception is made by the division.

488 (19) "Operator" means a natural person, corporation, association, partnership, receiver,
489 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
490 representative, either public or private, owning, controlling, or managing a mining operation or
491 proposed mining operation.

492 (20) "Order" means written information provided by the division or board to an
493 operator or other parties, describing the compliance status of a permit or mining operation.

494 (21) "Owner" means a natural person, corporation, association, partnership, receiver,
495 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or

representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.

(22) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.

(23) "Permit" means a permit or notice to conduct mining operations issued by the division.

(24) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.

(25) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.

(26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.

(27) "Small mining operations" means mining operations which disturb or will disturb five or less surface acres at any given time.

(28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Section 9. Section **40-8-6** is amended to read:

40-8-6. Board -- Powers, functions, and duties.

In addition to those provided in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, the board has the following powers, functions, and duties:

(1) To enact rules according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are reasonably necessary to carry out the purposes of this chapter.

(2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.

(3) To issue emergency orders according to the requirements and provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(4) To do all other things and take such other actions within the purposes of this act as

may be necessary to enforce its provisions.

Section 10. Section **40-10-27** is amended to read:

**40-10-27. Entry upon land adversely affected by past coal mining practices --
Conducting of studies or exploratory work -- State acquisition of land -- Lien -- Waste
disposal fund -- Water pollution control and treatment plants.**

(1) (a) If the board, after notice and hearing, makes a finding of fact as provided in Subsection (1)(b), the agents, employees, or contractors of the division shall have the right to enter property adversely affected by past coal mining practices and any other property to have access to property adversely affected by past coal mining practices to do whatever is necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects.

(b) The board shall find that:

(i) land or water resources have been adversely affected by past coal mining practices;

(ii) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

(A) are not known;

(B) are not readily available; or

(C) will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) Notice of the division's right to enter the property shall be:

(i) given by mail, if the owners are known; and

(ii) posted upon the premises and advertised once in a newspaper of general circulation in the county in which the land lies, if the owners are not known.

(d) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property nor of trespass on it.

(e) The monies expended for this work and the benefits accruing to the premises entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by

virtue of the entry.

(f) Subsection (1) is not intended to create new rights of action or eliminate existing immunities.

(2) (a) The agents, employees, or contractors of the division may enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of these adverse effects.

(b) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property or trespass on it.

(3) The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past coal mining practices if the board, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:

(a) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(b) (i) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(ii) acquisitions of coal refuse disposal sites and all coal refuse on the sites will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(4) (a) Title to all lands acquired under this section shall be in the name of the state.

(b) The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(5) (a) If land acquired under this section is considered suitable for industrial, commercial, residential, or recreational development, the division, in conjunction with the Division of Forestry, Fire, and State Lands, may sell this land by public sale under a system of competitive bidding, at not less than fair market value, and under any other rules promulgated to insure that the land is put to proper use consistent with local and state land use plans.

(b) (i) The state, when requested after appropriate public notice, shall hold a public

589 hearing with the appropriate notice, in the counties or appropriate political subdivisions of the
590 state in which lands acquired under this section are located.

591 (ii) The hearing shall be held at a time which shall afford local citizens and
592 governments the maximum opportunity to participate in the decision concerning the use or
593 disposition of the lands after restoration, reclamation, abatement, control, or prevention of the
594 adverse effects of past coal mining practices.

595 (6) (a) The state, through the division and the Division of Forestry, Fire, and State
596 Lands, shall have the authority to accept lands acquired and reclaimed by the Secretary of the
597 Interior pursuant to Section 407(h) of Public Law 95-87.

598 (b) The division has the authority to accept grants from the Secretary to carry out the
599 purposes of Section 407(h) of Public Law 95-87.

600 (7) (a) Within six months after the completion of projects to restore, reclaim, abate,
601 control, or prevent adverse effects of past coal mining practices on privately owned land, the
602 division shall itemize the monies expended and may file a statement of those expenses in the
603 office of the county recorder of the county in which the land lies, together with a notarized
604 appraisal by an independent appraiser of the value of the land before the restoration,
605 reclamation, abatement, control, or prevention of adverse effects of past coal mining practices
606 if the monies expended result in a significant increase in property value.

607 (b) This statement shall constitute a lien upon the land described in it.

608 (c) The lien may not exceed the amount determined by the appraisal to be the increase
609 in the market value of the land as a result of the restoration, reclamation, abatement, control, or
610 prevention of the adverse effects of past coal mining practices.

611 (d) A lien may not be filed against the property of any person, in accordance with this
612 subsection who owned the surface prior to May 2, 1977, and who neither consented to nor
613 participated in nor exercised control over the mining operation which necessitated the
614 reclamation performed.

615 (8) (a) The landowner may proceed to petition within 60 days after the filing of the lien
616 to determine the increase in the market value of the land as a result of the restoration,
617 reclamation, abatement, control, or prevention of the adverse effects of past coal mining
618 practices.

619 (b) The amount reported to be the increase in value of the premises shall constitute the

amount of the lien and shall be recorded with the statement provided for in Subsection (7).

(c) Any party aggrieved by the decision may appeal as provided by law.

(9) (a) The lien provided in this section shall be recorded in the office of the county recorder of the county in which the land lies.

(b) The statement shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(10) (a) The division may fill any voids, seal any abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the division determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

(b) The division may make expenditures and carry out the purposes of this section without regard to the provisions of Subsections 40-10-25(2) and (3) only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

(c) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from these operations by filling voids and sealing tunnels may be eligible for funding if the disposal of these wastes meets the purposes of this section.

(d) The division may acquire by purchase, donation, easement, or otherwise those interests in land it determines necessary to carry out the provisions of this section.

(11) (a) The division may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this section.

(b) (i) The division, in conjunction with appropriate state agencies as determined in the rules, may construct and operate plants for the control and treatment of water pollution resulting from mine drainage.

(ii) The extent of this control and treatment of water pollution may be dependent upon the ultimate use of the water.

(iii) This subsection may not be construed to repeal or supersede any portion of the

federal Water Pollution Control Act, 33 U.S.C. Sec. 1151 et seq., and no control or treatment under this subsection shall in any way be less than that required under the federal Water Pollution Control Act.

(iv) The construction of a plant may include major interceptors and other facilities appurtenant to the plant.

(c) The division may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this chapter.

Section 11. Section **54-17-701** is amended to read:

54-17-701. Rules for carbon capture and geological storage.

(1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality, on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in collaboration with the commission and the Division of Oil, Gas, and Mining and the Utah Geological Survey, shall present recommended rules to the Legislature's Administrative Rules Review Committee for the following in connection with carbon capture and accompanying geological sequestration of captured carbon:

- (a) site characterization approval;
- (b) geomechanical, geochemical, and hydrogeological simulation;
- (c) risk assessment;
- (d) mitigation and remediation protocols;
- (e) issuance of permits for test, injection, and monitoring wells;
- (f) specifications for the drilling, construction, and maintenance of wells;
- (g) issues concerning ownership of subsurface rights and pore space;
- (h) allowed composition of injected matter;
- (i) testing, monitoring, measurement, and verification for the entirety of the carbon capture and geologic sequestration chain of operations, from the point of capture of the carbon dioxide to the sequestration site;
- (j) closure and decommissioning procedure;
- (k) short- and long-term liability and indemnification for sequestration sites;
- (l) conversion of enhanced oil recovery operations to carbon dioxide geological sequestration sites; and
- (m) other issues as identified.

(2) The entities listed in Subsection (1) shall report to the Legislature's Administrative Rules Review Committee any proposals for additional statutory changes needed to implement rules contemplated under Subsection (1).

(3) On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the Legislature's Public Utilities and Technology and Natural Resources, Agriculture, and Environment Interim Committees a progress report on the development of the recommended rules required by this part.

(4) The recommended rules developed under this section apply to the injection of carbon dioxide and other associated injectants in allowable types of geological formations for the purpose of reducing emissions to the atmosphere through long-term geological sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

(5) The recommended rules developed under this section do not apply to the injection of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.6(b) for the purpose of enhanced hydrocarbon recovery.

(6) Rules recommended under this section shall:

(a) ensure that adequate health and safety standards are met;

(b) minimize the risk of unacceptable leakage from the injection well and injection zone for carbon capture and geologic sequestration; and

(c) provide adequate regulatory oversight and public information concerning carbon capture and geologic sequestration.

Section 12. Section **59-5-101** is amended to read:

59-5-101. Definitions.

As used in this part:

(1) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

(2) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(3) "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.

(4) "Crude oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

713 (5) "Development well" means any oil and gas producing well other than a wildcat
714 well.

715 (6) "Division" means the Division of Oil, Gas, and Mining established under Title 40,
716 Chapter 6.

717 (7) "Enhanced recovery project" means:

718 (a) the injection of liquids or hydrocarbon or nonhydrocarbon gases directly into a
719 reservoir for the purpose of:

720 (i) augmenting reservoir energy;

721 (ii) modifying the properties of the fluids or gases in a reservoir; or

722 (iii) changing the reservoir conditions to increase the recoverable oil, gas, or oil and
723 gas through the joint use of two or more well bores; and

724 (b) a project initially approved by the board as a new or expanded enhanced recovery
725 project on or after January 1, 1996.

726 (8) (a) "Gas" means:

727 (i) natural gas;

728 (ii) natural gas liquids; or

729 (iii) any mixture of natural gas and natural gas liquids.

730 (b) "Gas" does not include solid hydrocarbons.

731 (9) "Incremental production" means that part of production, certified by the Division of
732 Oil, Gas, and Mining, which is achieved from an enhanced recovery project that would not
733 have economically occurred under the reservoir conditions existing before the project and that
734 has been approved by the division as incremental production.

735 (10) "Natural gas" means those hydrocarbons, other than oil and other than natural gas
736 liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and
737 are produced and recovered at the wellhead in gaseous form.

738 (11) "Natural gas liquids" means those hydrocarbons initially in reservoir natural gas,
739 regardless of gravity, that are separated in gas processing plants from the natural gas as liquids
740 at the surface through the process of condensation, absorption, adsorption, or other methods.

741 (12) (a) "Oil" means:

742 (i) crude oil;

743 (ii) condensate; or

744 (iii) any mixture of crude oil and condensate.

745 (b) "Oil" does not include solid hydrocarbons.

746 (13) "Oil or gas field" means a geographical area overlying oil or gas structures. The
747 boundaries of oil or gas fields shall conform with the boundaries as fixed by the Board and
748 Division of Oil, Gas, and Mining under Title 40, Chapter 6, Board and Division of Oil, Gas,
749 and Mining.

750 (14) "Oil shale" means a group of fine black to dark brown shales containing
751 bituminous material that yields petroleum upon distillation.

752 (15) "Operator" means any person engaged in the business of operating an oil or gas
753 well, regardless of whether the person is:

754 (a) a working interest owner;

755 (b) an independent contractor; or

756 (c) acting in a capacity similar to Subsection (15)(a) or (b) as determined by the
757 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
758 Rulemaking Act.

759 (16) "Owner" means any person having a working interest, royalty interest, payment
760 out of production, or any other interest in the oil or gas produced or extracted from an oil or gas
761 well in the state, or in the proceeds of this production.

762 (17) (a) Subject to Subsections (17)(b) and (c), "processing costs" means the
763 reasonable actual costs of processing oil or gas to remove:

764 (i) natural gas liquids; or

765 (ii) contaminants.

766 (b) If processing costs are determined on the basis of an arm's-length contract,
767 processing costs are the actual costs.

768 (c) (i) If processing costs are determined on a basis other than an arm's-length contract,
769 processing costs are those reasonable costs associated with:

770 (A) actual operating and maintenance expenses, including oil or gas used or consumed
771 in processing;

772 (B) overhead directly attributable and allocable to the operation and maintenance; and

773 (C) (I) depreciation and a return on undepreciated capital investment; or

774 (II) a cost equal to a return on the investment in the processing facilities as determined

775 by the commission.

776 (ii) Subsection (17)(c)(i) includes situations where the producer performs the
777 processing for the producer's product.

778 (18) "Producer" means any working interest owner in any lands in any oil or gas field
779 from which gas or oil is produced.

780 (19) "Recompletion" means any downhole operation that is:

781 (a) conducted to reestablish the producibility or serviceability of a well in any geologic
782 interval; and

783 (b) approved by the division as a recompletion.

784 (20) "Research and development" means the process of inquiry or experimentation
785 aimed at the discovery of facts, devices, technologies, or applications and the process of
786 preparing those devices, technologies, or applications for marketing.

787 (21) "Royalty interest owner" means the owner of an interest in oil or gas, or in the
788 proceeds of production from the oil or gas who does not have the obligation to share in the
789 expenses of developing and operating the property.

790 (22) "Solid hydrocarbons" means:

791 (a) coal;

792 (b) gilsonite;

793 (c) ozocerite;

794 (d) elaterite;

795 (e) oil shale;

796 (f) tar sands; and

797 (g) all other hydrocarbon substances that occur naturally in solid form.

798 (23) "Stripper well" means:

799 (a) an oil well whose average daily production for the days the well has produced has
800 been 20 barrels or less of crude oil a day during any consecutive 12-month period; or

801 (b) a gas well whose average daily production for the days the well has produced has
802 been 60 MCF or less of natural gas a day during any consecutive 90-day period.

803 (24) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
804 and require further processing other than mechanical blending before becoming finished
805 petroleum products.

(25) (a) Subject to Subsections (25)(b) and (c), "transportation costs" means the reasonable actual costs of transporting oil or gas products from the well to the point of sale.

(b) If transportation costs are determined on the basis of an arm's-length contract, transportation costs are the actual costs.

(c) (i) If transportation costs are determined on a basis other than an arm's-length contract, transportation costs are those reasonable costs associated with:

(A) actual operating and maintenance expenses, including fuel used or consumed in transporting the oil or gas;

(B) overhead costs directly attributable and allocable to the operation and maintenance; and

(C) depreciation and a return on undepreciated capital investment.

(ii) Subsection (25)(c)(i) includes situations where the producer performs the transportation for the producer's product.

(d) Regardless of whether transportation costs are determined on the basis of an arm's-length contract or a basis other than an arm's-length contract, transportation costs include:

(i) carbon dioxide removal;

(ii) compression;

(iii) dehydration;

(iv) gathering;

(v) separating;

(vi) treating; or

(vii) a process similar to Subsections (25)(d)(i) through (vi), as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(26) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(27) "Well or wells" means any extractive means from which oil or gas is produced or extracted, located within an oil or gas field, and operated by one person.

(28) "Wildcat well" means an oil and gas producing well which is drilled and completed in a pool, as defined under Section 40-6-2, in which a well has not been previously completed as a well capable of producing in commercial quantities.

(29) "Working interest owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

(30) (a) "Workover" means any downhole operation that is:

(i) conducted to sustain, restore, or increase the producibility or serviceability of a well in the geologic intervals in which the well is currently completed; and

(ii) approved by the division as a workover.

(b) "Workover" does not include operations that are conducted primarily as routine maintenance or to replace worn or damaged equipment.

Section 13. Section **59-12-103 (Effective 01/01/09)** is amended to read:

59-12-103 (Effective 01/01/09). Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

- 868 (i) gas;
- 869 (ii) electricity;
- 870 (iii) heat;
- 871 (iv) coal;
- 872 (v) fuel oil; or
- 873 (vi) other fuels;
- 874 (e) sales of prepared food;
- 875 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 876 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 877 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 878 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 879 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 880 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 881 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 882 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 883 exhibition, cultural, or athletic activity;
- 884 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 885 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 886 (i) the tangible personal property; and
- 887 (ii) parts used in the repairs or renovations of the tangible personal property described
- 888 in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations
- 889 of that tangible personal property;
- 890 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 891 assisted cleaning or washing of tangible personal property;
- 892 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 893 accommodations and services that are regularly rented for less than 30 consecutive days;
- 894 (j) amounts paid or charged for laundry or dry cleaning services;
- 895 (k) amounts paid or charged for leases or rentals of tangible personal property if within
- 896 this state the tangible personal property is:
- 897 (i) stored;
- 898 (ii) used; or

899 (iii) otherwise consumed;

900 (l) amounts paid or charged for tangible personal property if within this state the

901 tangible personal property is:

902 (i) stored;

903 (ii) used; or

904 (iii) consumed;

905 (m) amounts paid or charged for prepaid telephone calling cards; and

906 (n) amounts paid or charged for a sale:

907 (i) (A) of a product that:

908 (I) is transferred electronically; and

909 (II) would be subject to a tax under this chapter if the product was transferred in a

910 manner other than electronically; or

911 (B) of a repair or renovation of a product that:

912 (I) is transferred electronically; and

913 (II) would be subject to a tax under this chapter if the product was transferred in a

914 manner other than electronically; and

915 (ii) regardless of whether the sale provides:

916 (A) a right of permanent use of the product; or

917 (B) a right to use the product that is less than a permanent use, including a right:

918 (I) for a definite or specified length of time; and

919 (II) that terminates upon the occurrence of a condition.

920 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax

921 is imposed on a transaction described in Subsection (1) equal to the sum of:

922 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

923 (A) 4.70%; and

924 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales

925 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

926 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional

927 State Sales and Use Tax Act; and

928 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales

929 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled

transaction described in Subsection (2)(d)(i):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) Subject to Subsections (2) (f) and (g), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(f) (i) A tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease if the billing period for the transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(g) (i) For a tax rate described in Subsection (2) (g)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2) (g)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

1023 (iii) the tax imposed by Subsection (2)(c)(ii); and
1024 (iv) the tax imposed by Subsection (2)(d)(i)(B).
1025 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1026 2003, the lesser of the following amounts shall be used as provided in Subsections (4)(b)
1027 through (g):
1028 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
1029 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
1030 (B) for the fiscal year; or
1031 (ii) \$17,500,000.
1032 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
1033 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the
1034 Department of Natural Resources to:
1035 (A) implement the measures described in Subsections [~~63-34-14(4)(a)~~] 79-2-303(3)(a)
1036 through (d) to protect sensitive plant and animal species; or
1037 (B) award grants, up to the amount authorized by the Legislature in an appropriations
1038 act, to political subdivisions of the state to implement the measures described in Subsections
1039 [~~63-34-14(4)(a)~~] 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.
1040 (ii) Money transferred to the Department of Natural Resources under Subsection
1041 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
1042 person to list or attempt to have listed a species as threatened or endangered under the
1043 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
1044 (iii) At the end of each fiscal year:
1045 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
1046 Conservation and Development Fund created in Section 73-10-24;
1047 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
1048 Program Subaccount created in Section 73-10c-5; and
1049 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
1050 Program Subaccount created in Section 73-10c-5.
1051 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
1052 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
1053 created in Section 4-18-6.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited in the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

1085 (i) provide for the installation and repair of collection, treatment, storage, and
1086 distribution facilities for any public water system, as defined in Section 19-4-102;
1087 (ii) develop underground sources of water, including springs and wells; and
1088 (iii) develop surface water sources.

1089 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1090 2006, the difference between the following amounts shall be expended as provided in this
1091 Subsection (5), if that difference is greater than \$1:

1092 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
1093 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and
1094 (ii) \$17,500,000.

1095 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:
1096 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
1097 credits; and
1098 (B) expended by the Department of Natural Resources for watershed rehabilitation or
1099 restoration.

1100 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1101 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
1102 created in Section 73-10-24.

1103 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
1104 remaining difference described in Subsection (5)(a) shall be:
1105 (A) transferred each fiscal year to the Division of Water Resources as dedicated
1106 credits; and
1107 (B) expended by the Division of Water Resources for cloud-seeding projects
1108 authorized by Title 73, Chapter 15, Modification of Weather.

1109 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
1110 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
1111 created in Section 73-10-24.

1112 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the
1113 remaining difference described in Subsection (5)(a) shall be deposited into the Water
1114 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
1115 Division of Water Resources for:

1116 (i) preconstruction costs:
1117 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
1118 26, Bear River Development Act; and
1119 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
1120 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;
1121 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
1122 Chapter 26, Bear River Development Act;
1123 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
1124 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and
1125 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, 73-10-30, and
1126 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).
1127 (e) Any unexpended monies described in Subsection (5)(d) that remain in the Water
1128 Resources Conservation and Development Fund at the end of the fiscal year are nonlapsing.
1129 (f) After making the transfers required by Subsections (5)(b) and (c) and subject to
1130 Subsection (5)(g), 6% of the remaining difference described in Subsection (5)(a) shall be
1131 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
1132 incurred for employing additional technical staff for the administration of water rights.
1133 (g) At the end of each fiscal year, any unexpended dedicated credits described in
1134 Subsection (5)(f) over \$150,000 lapse to the Water Resources Conservation and Development
1135 Fund created in Section 73-10-24.
1136 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
1137 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%
1138 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited in
1139 the Transportation Fund created by Section 72-2-102.
1140 (7) (a) Notwithstanding Subsection (3)(a) and until Subsection (7)(b) applies,
1141 beginning on January 1, 2000, the Division of Finance shall deposit into the Centennial
1142 Highway Fund Restricted Account created in Section 72-2-118 a portion of the taxes listed
1143 under Subsection (3)(a) equal to the revenues generated by a 1/64% tax rate on the taxable
1144 transactions under Subsection (1).
1145 (b) Notwithstanding Subsection (3)(a), when the highway general obligation bonds
1146 have been paid off and the highway projects completed that are intended to be paid from

1147 revenues deposited in the Centennial Highway Fund Restricted Account as determined by the
1148 Executive Appropriations Committee under Subsection 72-2-118(6)(d), the Division of
1149 Finance shall deposit into the Transportation Investment Fund of 2005 created by Section
1150 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated
1151 by a 1/64% tax rate on the taxable transactions under Subsection (1).

1152 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amount deposited in
1153 Subsection (7)(a), and until Subsection (8)(b) applies, for a fiscal year beginning on or after
1154 July 1, 2007, the Division of Finance shall deposit into the Centennial Highway Fund
1155 Restricted Account created by Section 72-2-118 a portion of the taxes listed under Subsection
1156 (3)(a) equal to 8.3% of the revenues collected from the following taxes, which represents a
1157 portion of the approximately 17% of sales and use tax revenues generated annually by the sales
1158 and use tax on vehicles and vehicle-related products:

- 1159 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1160 (ii) the tax imposed by Subsection (2)(b)(i);
- 1161 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1162 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1163 (b) Notwithstanding Subsection (3)(a) and in addition to the amounts deposited under
1164 Subsection (7)(b), when the highway general obligation bonds have been paid off and the
1165 highway projects completed that are intended to be paid from revenues deposited in the
1166 Centennial Highway Fund Restricted Account as determined by the Executive Appropriations
1167 Committee under Subsection 72-2-118(6)(d), the Division of Finance shall deposit into the
1168 Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes
1169 listed under Subsection (3)(a) equal to 8.3% of the revenues collected from the following taxes,
1170 which represents a portion of the approximately 17% of sales and use tax revenues generated
1171 annually by the sales and use tax on vehicles and vehicle-related products:

- 1172 (i) the tax imposed by Subsection (2)(a)(i)(A);
- 1173 (ii) the tax imposed by Subsection (2)(b)(i);
- 1174 (iii) the tax imposed by Subsection (2)(c)(i); and
- 1175 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

1176 (9) (a) Notwithstanding Subsection (3)(a) and for the fiscal year 2008-09 only, the
1177 Division of Finance shall deposit \$55,000,000 of the revenues generated by the taxes listed

under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(b) Notwithstanding Subsection (3)(a) and until Subsection (9)(c) applies, for a fiscal year beginning on or after July 1, 2009, the Division of Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Critical Highway Needs Fund created by Section 72-2-125.

(c) Notwithstanding Subsection (3)(a) and in addition to any amounts deposited under Subsections (7) and (8), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2008-09, \$915,000 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 9-4-1409 and expended as provided in Section 9-4-1409.

(11) (a) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(a)(ii), and until Subsection (11)(b) applies, beginning on January 1, 2009, the Division of Finance shall deposit into the Critical Highway Needs Fund created by Section 72-2-125 the amount of tax revenue generated by a .025% tax rate on the transactions described in Subsection (1).

(ii) For purposes of Subsection (11)(a)(i), the Division of Finance may not deposit into the Critical Highway Needs Fund any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(b) (i) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b)(ii), and in addition to any amounts deposited under Subsections (7), (9), and (10), when the general obligation bonds authorized by Section 63B-16-101 have been paid off and the highway projects completed that are included in the prioritized project list under Subsection 72-2-125(4) as determined in accordance with Subsection 72-2-125(6), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the

1209 amount of tax revenue generated by a .025% tax rate on the transactions described in
1210 Subsection (1).

1211 (ii) For purposes of Subsection (11)(b)(i), the Division of Finance may not deposit into
1212 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
1213 charged for food and food ingredients, except for tax revenue generated by a bundled
1214 transaction attributable to food and food ingredients and tangible personal property other than
1215 food and food ingredients described in Subsection (2)(e).

1216 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection
1217 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the
1218 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a
1219 .025% tax rate on the transactions described in Subsection (1) to be expended to address
1220 chokepoints in construction management.

1221 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into
1222 the Transportation Fund any tax revenue generated by amounts paid or charged for food and
1223 food ingredients, except for tax revenue generated by a bundled transaction attributable to food
1224 and food ingredients and tangible personal property other than food and food ingredients
1225 described in Subsection (2)(e).

1226 Section 14. Section **59-23-4** is amended to read:

1227 **59-23-4. Brine shrimp royalty -- Royalty rate -- Commission to prepare billing**
1228 **statement -- Deposit of revenue.**

1229 (1) (a) Beginning on February 1, 2004, and ending on January 31, 2006, there is
1230 imposed for each tax year a brine shrimp royalty of the lesser of:

1231 (i) 3.75 cents multiplied by the total pounds of unprocessed brine shrimp eggs that are
1232 harvested in the state during the tax year; or

1233 (ii) \$550,000.

1234 (b) Beginning on February 1, 2006, there is imposed for each tax year a brine shrimp
1235 royalty of 3.75 cents multiplied by the pounds of unprocessed brine shrimp eggs that are
1236 harvested in the state during the tax year.

1237 (2) Beginning on February 1, 2004, and ending on January 31, 2006, the royalty
1238 amount due from a person for each tax year is:

1239 (a) if the brine shrimp royalty for the tax year is as described in Subsection (1)(a)(i),

1240 the gross volume of unprocessed brine shrimp eggs harvested in the state by that person during
1241 that tax year multiplied by 3.75 cents; or

1242 (b) if the brine shrimp royalty for the tax year is \$550,000, the gross volume of
1243 unprocessed brine shrimp eggs harvested in the state by that person for that tax year multiplied
1244 by the alternate royalty rate.

1245 (3) Beginning on February 1, 2006, the royalty amount due from a person for a tax year
1246 is the gross volume of unprocessed brine shrimp eggs harvested in the state by that person
1247 during that tax year multiplied by 3.75 cents.

1248 (4) (a) A person that harvests unprocessed brine shrimp eggs shall report to the
1249 Department of Natural Resources the total gross volume of unprocessed brine shrimp eggs
1250 harvested by that person for that tax year on or before the February 15 immediately following
1251 the last day of that tax year.

1252 (b) The Department of Natural Resources shall provide the following information to
1253 the commission on or before the March 1 immediately following the last day of a tax year:

1254 (i) the total gross volume of unprocessed brine shrimp eggs harvested for that tax year;
1255 and

1256 (ii) for each person that harvested brine shrimp eggs for that tax year:

1257 (A) the gross volume of unprocessed brine shrimp eggs harvested by that person for
1258 that tax year; and

1259 (B) a current billing address for that person; and

1260 (iii) any additional information required by the commission.

1261 (c) (i) The commission shall prepare and mail a billing statement to each person that
1262 harvested unprocessed brine shrimp eggs by the March 30 immediately following the last day
1263 of a tax year.

1264 (ii) The billing statement under Subsection (4)(c)(i) shall specify:

1265 (A) the gross volume of unprocessed brine shrimp eggs harvested by that person for
1266 that tax year;

1267 (B) the amount of brine shrimp royalty that the person owes; and

1268 (C) the date that the brine shrimp royalty payment is due as provided in Section

1269 59-23-5.

1270 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1271 commission may make rules prescribing the information required under Subsection (4)(b)(iii).

1272 (5) All revenue generated by the brine shrimp royalty shall be deposited in the Species
1273 Protection Account created in Section [~~63-34-14~~] 79-2-303.

1274 (6) Beginning with the 2004 interim, the Revenue and Taxation Interim Committee:

1275 (a) shall review the annual brine shrimp royalty amount imposed under this section one
1276 or more times every five years;

1277 (b) shall determine on or before the November interim meeting of the year in which the
1278 Revenue and Taxation Interim Committee reviews the annual brine shrimp royalty amount
1279 imposed under this section whether the royalty amount should be:

1280 (i) continued;

1281 (ii) modified; or

1282 (iii) repealed; and

1283 (c) may review any other issue related to the brine shrimp royalty imposed under this
1284 part as determined by the Revenue and Taxation Interim Committee.

1285 Section 15. Section **63A-5-204** is amended to read:

1286 **63A-5-204. Specific powers and duties of director.**

1287 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
1288 same meaning as provided in Section 63C-9-102.

1289 (2) (a) The director shall:

1290 (i) recommend rules to the executive director for the use and management of facilities
1291 and grounds owned or occupied by the state for the use of its departments and agencies;

1292 (ii) supervise and control the allocation of space, in accordance with legislative
1293 directive through annual appropriations acts or other specific legislation, to the various
1294 departments, commissions, institutions, and agencies in all buildings or space owned, leased, or
1295 rented by or to the state, except capitol hill facilities and capitol hill grounds and except as
1296 otherwise provided by law;

1297 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
1298 Division of Facilities Construction and Management Leasing;

1299 (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature
1300 through the appropriations act or other specific legislation, and hold title to, in the name of the
1301 division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its

1302 agencies;

1303 (v) adopt and use a common seal, of a form and design determined by the director, and

1304 of which courts shall take judicial notice;

1305 (vi) file a description and impression of the seal with the Division of Archives;

1306 (vii) collect and maintain all deeds, abstracts of title, and all other documents

1307 evidencing title to or interest in property belonging to the state or any of its departments, except

1308 institutions of higher education and the School and Institutional Trust Lands Administration;

1309 (viii) report all properties acquired by the state, except those acquired by institutions of

1310 higher education, to the director of the Division of Finance for inclusion in the state's financial

1311 records;

1312 (ix) before charging a rate, fee, or other amount for services provided by the division's

1313 internal service fund to an executive branch agency, or to a subscriber of services other than an

1314 executive branch agency:

1315 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee

1316 established in Section 63A-1-114; and

1317 (B) obtain the approval of the Legislature as required by Section 63J-1-306;

1318 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed

1319 rates and fees, which analysis shall include a comparison of the division's rates and fees with

1320 the fees of other public or private sector providers where comparable services and rates are

1321 reasonably available;

1322 (xi) implement the State Building Energy Efficiency Program under Section

1323 63A-5-701; and

1324 (xii) take all other action necessary for carrying out the purposes of this chapter.

1325 (b) Legislative approval is not required for acquisitions by the division that cost less

1326 than \$250,000.

1327 (3) (a) The director shall direct or delegate maintenance and operations, preventive

1328 maintenance, and facilities inspection programs and activities for any department, commission,

1329 institution, or agency, except:

1330 (i) the State Capitol Preservation Board; and

1331 (ii) state institutions of higher education.

1332 (b) The director may choose to delegate responsibility for these functions only when

1333 the director determines that:

1334 (i) the department or agency has requested the responsibility;

1335 (ii) the department or agency has the necessary resources and skills to comply with
1336 facility maintenance standards approved by the State Building Board; and

1337 (iii) the delegation would result in net cost savings to the state as a whole.

1338 (c) The State Capitol Preservation Board and state institutions of higher education are
1339 exempt from Division of Facilities Construction and Management oversight.

1340 (d) Each state institution of higher education shall comply with the facility
1341 maintenance standards approved by the State Building Board.

1342 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
1343 exempt from division oversight shall annually report their compliance with the facility
1344 maintenance standards to the division in the format required by the division.

1345 (f) The division shall:

1346 (i) prescribe a standard format for reporting compliance with the facility maintenance
1347 standards;

1348 (ii) report agency and institution compliance or noncompliance with the standards to
1349 the Legislature; and

1350 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
1351 complying with the standards.

1352 (4) (a) In making any allocations of space under Subsection (2), the director shall:

1353 (i) conduct studies to determine the actual needs of each department, commission,
1354 institution, or agency; and

1355 (ii) comply with the restrictions contained in this Subsection (4).

1356 (b) The supervision and control of the legislative area is reserved to the Legislature.

1357 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
1358 courts only.

1359 (d) The director may not supervise or control the allocation of space for entities in the
1360 public and higher education systems.

1361 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
1362 reserved to the State Capitol Preservation Board.

1363 (5) The director may:

(a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;

(b) sue and be sued in the name of the division; and

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature, whatever real or personal property that is necessary for the discharge of the director's duties.

(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

(a) the Office of Trust Administrator;

(b) the Department of Transportation;

(c) the Division of Forestry, Fire, and State Lands;

(d) the Department of Natural Resources;

(e) the Utah National Guard;

(f) any area vocational center or other institution administered by the State Board of Education;

(g) any institution of higher education; and

(h) the Utah Science Technology and Research Governing Authority.

(7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:

(a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329; and

(b) carry a minimum of \$1,000,000 of errors and omissions insurance.

(8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

Section 16. Section **63A-5-222** is amended to read:

63A-5-222. Critical land near state prison -- Definitions -- Preservation as open land -- Management and use of land -- Restrictions on transfer -- Wetlands development -- Conservation easement.

(1) For purposes of this section:

(a) "Corrections" means the Department of Corrections created under Section 64-13-2.

(b) "Critical land" means a parcel of approximately 250 acres of land owned by the division and located on the east edge of the Jordan River between about 12300 South and 14600 South in Salt Lake County, approximately the southern half of whose eastern boundary abuts the Denver and Rio Grande Western Railroad right of way.

(c) (i) "Open land" means land that is:

(A) preserved in or restored to a predominantly natural, open, and undeveloped condition; and

(B) used for:

(I) wildlife habitat;

(II) cultural or recreational use;

(III) watershed protection; or

(IV) another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open, and undeveloped condition.

(ii) (A) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.

(B) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:

(I) enhance the natural, scenic, or aesthetic qualities of the land; or

(II) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.

(2) (a) (i) The critical land shall be preserved in perpetuity as open land.

(ii) The long-term ownership and management of the critical land should eventually be turned over to the Department of Natural Resources created under Section ~~[63-34-3]~~ 79-2-201 or another agency or entity that is able to accomplish the purposes and intent of this section.

(b) Notwithstanding Subsection (2)(a)(i) and as funding is available, certain actions should be taken on or with respect to the critical land, including:

(i) the development and implementation of a program to eliminate noxious vegetation and restore and facilitate the return of natural vegetation on the critical land;

(ii) the development of a system of trails through the critical land that is compatible with the preservation of the critical land as open land;

(iii) the development and implementation of a program to restore the natural features of and improve the flows of the Jordan River as it crosses the critical land;

(iv) the preservation of the archeological site discovered on the critical land and the development of an interpretive site in connection with the archeological discovery;

(v) in restoring features on the critical land, the adoption of methods and plans that will enhance the critical land's function as a wildlife habitat;

(vi) taking measures to reduce safety risks on the critical land; and

(vii) the elimination or rehabilitation of a prison dump site on the critical land.

(3) (a) Except as provided in Subsection (3)(b), no interest in the critical land may be sold, assigned, leased, or otherwise transferred unless measures are taken to ensure that the critical land that is transferred will be preserved as open land in perpetuity.

(b) Notwithstanding Subsection (3)(a), exchanges of property may be undertaken to resolve boundary disputes with adjacent property owners and easements may be granted for trails and other purposes consistent with Subsection (2)(b) and with the preservation of the critical land as open land.

(4) The division shall use the funds remaining from the appropriation under Laws of Utah 1998, Chapter 399, for the purposes of:

(a) determining the boundaries and legal description of the critical land;

(b) determining the boundaries and legal description of the adjacent property owned by the division;

(c) fencing the critical land and adjacent land owned by the division where appropriate and needed; and

(d) assisting to carry out the intent of this section.

(5) (a) Notwithstanding Subsection (2)(a)(i), the division or its successor in title to the critical land may develop or allow a public agency or private entity to develop more wetlands

1457 on the critical land than exist naturally or existed previously.

1458 (b) (i) Subject to Subsections (3)(a) and (5)(b)(ii), the division or its successor in title
1459 may transfer jurisdiction of all or a portion of the critical land to a public agency or private
1460 entity to provide for the development and management of wetlands and designated wetland
1461 buffer areas.

1462 (ii) Before transferring jurisdiction of any part of the critical land under Subsection
1463 (5)(b)(i), the division or its successor in title shall assure that reasonable efforts are made to
1464 obtain approval from the appropriate federal agency to allow mitigation credits in connection
1465 with the critical land to be used for impacts occurring anywhere along the Wasatch Front.

1466 (6) Notwithstanding any other provision of this section, corrections shall have access to
1467 the cooling pond located on the critical land as long as that access to and use of the cooling
1468 pond are not inconsistent with the preservation of the critical land as open land.

1469 (7) The Department of Corrections, the division, and all other state departments,
1470 divisions, or agencies shall cooperate together to carry out the intent of this section.

1471 (8) In order to ensure that the land referred to in this section is preserved as open land,
1472 the division shall, as soon as practicable, place the land under a perpetual conservation
1473 easement in favor of an independent party such as a reputable land conservation organization or
1474 a state or local government agency with experience in conservation easements.

1475 Section 17. Section **63B-4-201** is amended to read:

1476 **63B-4-201. Legislative intent statements -- Capital facilities.**

1477 (1) (a) It is the intent of the Legislature that the University of Utah use institutional and
1478 other funds to plan, design, and construct two campus child care centers under the supervision
1479 of the director of the Division of Facilities Construction and Management unless supervisory
1480 authority is delegated by the director.

1481 (b) The university shall work with Salt Lake City and the surrounding neighborhood to
1482 ensure site compatibility for future recreational development by the city.

1483 (2) It is the intent of the Legislature that the University of Utah use institutional funds
1484 to plan, design, and construct:

1485 (a) the Union Parking structure under the supervision of the director of the Division of
1486 Facilities Construction and Management unless supervisory authority is delegated by the
1487 director;

1488 (b) the stadium renovation under the supervision of the director of the Division of
1489 Facilities Construction and Management unless supervisory authority is delegated by the
1490 director;

1491 (c) the Huntsman Cancer Institute under the supervision of the director of the Division
1492 of Facilities Construction and Management unless supervisory authority is delegated by the
1493 director;

1494 (d) the Business Case Method Building under the supervision of the director of the
1495 Division of Facilities Construction and Management unless supervisory authority is delegated
1496 by the director; and

1497 (e) the Fine Arts Museum expansion under the supervision of the director of the
1498 Division of Facilities Construction and Management unless supervisory authority is delegated
1499 by the director.

1500 (3) It is the intent of the Legislature that Utah State University use institutional funds to
1501 plan, design, and construct:

1502 (a) a student health services facility under the supervision of the director of the
1503 Division of Facilities Construction and Management unless supervisory authority is delegated
1504 by the director;

1505 (b) a women's softball field under the supervision of the director of the Division of
1506 Facilities Construction and Management unless supervisory authority is delegated by the
1507 director;

1508 (c) an addition to the Nutrition and Food Services Building under the supervision of
1509 the director of the Division of Facilities Construction and Management unless supervisory
1510 authority is delegated by the director; and

1511 (d) a Human Resource Research Center under the supervision of the director of the
1512 Division of Facilities Construction and Management unless supervisory authority is delegated
1513 by the director.

1514 (4) It is the intent of the Legislature that Weber State University use institutional funds
1515 to plan, design, and construct:

1516 (a) a track renovation under the supervision of the director of the Division of Facilities
1517 Construction and Management unless supervisory authority is delegated by the director; and

1518 (b) the Dee Events Center offices under the supervision of the director of the Division

1519 of Facilities Construction and Management unless supervisory authority is delegated by the
1520 director.

1521 (5) It is the intent of the Legislature that Southern Utah University use:

1522 (a) institutional funds to plan, design, and construct an institutional residence under the
1523 supervision of the director of the Division of Facilities Construction and Management unless
1524 supervisory authority is delegated by the director; and

1525 (b) project revenues and other funds to plan, design, and construct the Shakespearean
1526 Festival support facilities under the supervision of the director of the Division of Facilities
1527 Construction and Management unless supervisory authority is delegated by the director.

1528 (6) It is the intent of the Legislature that Dixie College use institutional funds to plan,
1529 design, and construct an institutional residence under the supervision of the director of the
1530 Division of Facilities Construction and Management unless supervisory authority is delegated
1531 by the director.

1532 (7) It is the intent of the Legislature that the Division of Forestry, Fire, and State Lands
1533 use federal and other funds to plan, design, and construct a wetlands enhancement facility
1534 under the supervision of the director of the Division of Facilities Construction and
1535 Management unless supervisory authority is delegated by the director.

1536 (8) (a) As provided in Subsection 63A-5-209(2), the funds appropriated to the Project
1537 Reserve Fund may only be used for the award of contracts in excess of the construction budget
1538 if these funds are required to meet the intent of the project.

1539 (b) It is the intent of the Legislature that:

1540 (i) up to \$2,000,000 of the amount may be used to award the construction contract for
1541 the Ogden Court Building; and

1542 (ii) the need for any funds remaining as of December 31, 1995 be reviewed by the 1996
1543 Legislature.

1544 (9) (a) It is the intent of the Legislature that the State Building Ownership Authority,
1545 under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue
1546 or execute obligations or enter into or arrange for a lease purchase agreement in which
1547 participation interests may be created to provide up to \$539,700 for the purchase and
1548 demolition of the Keyston property and construction of parking facilities adjacent to the State
1549 Office of Education Building in Salt Lake City, with additional amounts necessary to:

1550 (i) pay costs of issuance;
1551 (ii) pay capitalized interest; and
1552 (iii) fund any debt service reserve requirements.

1553 (b) It is the intent of the Legislature that the authority seek out the most cost effective
1554 and prudent lease purchase plan available with technical assistance from the state treasurer, the
1555 director of the Division of Finance, and the director of the Governor's Office of Planning and
1556 Budget.

1557 (10) (a) It is the intent of the Legislature that the monies appropriated for Phase One of
1558 the Remodeling/Life Safety Upgrades of the Browning Fine Arts Center at Weber State
1559 University is to include design of full code compliance, life safety, space necessary to maintain
1560 required programs, and seismic upgrades.

1561 (b) The design shall identify the full scope and cost of Phase Two of the remodeling for
1562 funding consideration in the fiscal year 1997 budget cycle.

1563 (11) It is the intent of the Legislature that:

1564 (a) the fiscal year 1996 appropriation for the Davis County Higher Education land
1565 purchase includes up to \$250,000 for planning purposes;

1566 (b) the Division of Facilities Construction and Management, the Board of Regents, and
1567 the assigned institution of higher education work jointly to ensure the following elements are
1568 part of the planning process:

1569 (i) projections of student enrollment and programmatic needs for the next ten years;
1570 (ii) review and make recommendations for better use of existing space, current
1571 technologies, public/private partnerships, and other alternatives as a means to reduce the need
1572 for new facilities and still accommodate the projected student needs; and

1573 (iii) use of a master plan that includes issues of utilities, access, traffic circulation,
1574 drainage, rights of way, future developments, and other infrastructure items considered
1575 appropriate; and

1576 (c) every effort is used to minimize expenditures for this part until a definitive decision
1577 has been made by BRACC relative to Hill Air Force Base.

1578 (12) (a) It is the intent of the Legislature that the State Building Ownership Authority,
1579 under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue
1580 or execute obligations or enter into or arrange for a lease purchase agreement in which

1581 participation interests may be created, to provide up to \$7,400,000 for the acquisition and
1582 improvement of the Human Services Building located at 120 North 200 West, Salt Lake City,
1583 Utah, with associated parking for the Department of Human Services together with additional
1584 amounts necessary to:

- 1585 (i) pay costs of issuance;
- 1586 (ii) pay capitalized interest; and
- 1587 (iii) fund any debt service reserve requirements.

1588 (b) It is the intent of the Legislature that the authority seek out the most cost effective
1589 and prudent lease purchase plan available with technical assistance from the state treasurer, the
1590 director of the Division of Finance, and the director of the Governor's Office of Planning and
1591 Budget.

1592 (13) (a) It is the intent of the Legislature that the State Building Ownership Authority,
1593 under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue
1594 or execute obligations or enter into or arrange for a lease purchase agreement in which
1595 participation interests may be created to provide up to \$63,218,600 for the construction of a
1596 Salt Lake Courts Complex together with additional amounts necessary to:

- 1597 (i) pay costs of issuance;
- 1598 (ii) pay capitalized interest; and
- 1599 (iii) fund any debt service reserve requirements.

1600 (b) It is the intent of the Legislature that the authority seek out the most cost effective
1601 and prudent lease purchase plan available with technical assistance from the state treasurer, the
1602 director of the Division of Finance, and the director of the Governor's Office of Planning and
1603 Budget.

1604 (c) It is the intent of the Legislature that the Division of Facilities Construction and
1605 Management lease land to the State Building Ownership Authority for the construction of a
1606 Salt Lake Courts Complex.

1607 (14) It is the intent of the Legislature that:

1608 (a) the Board of Regents use the higher education design project monies to design no
1609 more than two higher education projects from among the following projects:

- 1610 (i) College of Eastern Utah - Student Center;
- 1611 (ii) Snow College - Noyes Building;

1612 (iii) University of Utah - Gardner Hall;
1613 (iv) Utah State University - Widtsoe Hall; or
1614 (v) Southern Utah University - Physical Education Building; and
1615 (b) the higher education institutions that receive approval from the Board of Regents to
1616 design projects under this chapter design those projects under the supervision of the director of
1617 the Division of Facilities Construction and Management unless supervisory authority is
1618 delegated by the director.

1619 (15) It is the intent of the Legislature that:

1620 (a) the Board of Regents may authorize the University of Utah to use institutional
1621 funds and donated funds to design Gardner Hall; and

1622 (b) if authorized by the Board of Regents, the University of Utah may use institutional
1623 funds and donated funds to design Gardner Hall under the supervision of the director of the
1624 Division of Facilities Construction and Management unless supervisory authority is delegated
1625 by the director.

1626 (16) It is the intent of the Legislature that the Division of Facilities Construction and
1627 Management use up to \$250,000 of the capital improvement monies to fund the site
1628 improvements required at the San Juan campus of the College of Eastern Utah.

1629 Section 18. Section **63G-2-206** is amended to read:

1630 **63G-2-206. Sharing records.**

1631 (1) A governmental entity may provide a record that is private, controlled, or protected
1632 to another governmental entity, a government-managed corporation, a political subdivision, the
1633 federal government, or another state if the requesting entity:

1634 (a) serves as a repository or archives for purposes of historical preservation,
1635 administrative maintenance, or destruction;

1636 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the
1637 record is necessary to a proceeding or investigation;

1638 (c) is authorized by state statute to conduct an audit and the record is needed for that
1639 purpose;

1640 (d) is one that collects information for presentence, probationary, or parole purposes; or

1641 (e) (i) is:

1642 (A) the Legislature;

1643 (B) a legislative committee;
1644 (C) a member of the Legislature; or
1645 (D) a legislative staff member acting at the request of the Legislature, a legislative
1646 committee, or a member of the Legislature; and
1647 (ii) requests the record in relation to the Legislature's duties including:
1648 (A) the preparation or review of a legislative proposal or legislation;
1649 (B) appropriations; or
1650 (C) an investigation or review conducted by the Legislature or a legislative committee.
1651 (2) (a) A governmental entity may provide a private, controlled, or protected record or
1652 record series to another governmental entity, a political subdivision, a government-managed
1653 corporation, the federal government, or another state if the requesting entity provides written
1654 assurance:
1655 (i) that the record or record series is necessary to the performance of the governmental
1656 entity's duties and functions;
1657 (ii) that the record or record series will be used for a purpose similar to the purpose for
1658 which the information in the record or record series was collected or obtained; and
1659 (iii) that the use of the record or record series produces a public benefit that outweighs
1660 the individual privacy right that protects the record or record series.
1661 (b) A governmental entity may provide a private, controlled, or protected record or
1662 record series to a contractor or a private provider according to the requirements of Subsection
1663 (6)(b).
1664 (3) (a) A governmental entity shall provide a private, controlled, or protected record to
1665 another governmental entity, a political subdivision, a government-managed corporation, the
1666 federal government, or another state if the requesting entity:
1667 (i) is entitled by law to inspect the record;
1668 (ii) is required to inspect the record as a condition of participating in a state or federal
1669 program or for receiving state or federal funds; or
1670 (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).
1671 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
1672 63G-2-305(4).
1673 (4) Before disclosing a record or record series under this section to another

governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.

(b) A contractor or a private provider may receive information under this section only if:

(i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series;

(ii) the record or record series it requests:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(8) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining; and

(b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c).

(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Section 19. Section **63G-2-301** is amended to read:

63G-2-301. Records that must be disclosed.

(1) As used in this section:

(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.

(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):

(a) laws;

(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are

made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63G-2-305(16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63G-2-302(1)(i).

(3) The following records are normally public, but to the extent that a record is

1767 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
1768 Section 63G-2-302, 63G-2-304, or 63G-2-305:

1769 (a) administrative staff manuals, instructions to staff, and statements of policy;
1770 (b) records documenting a contractor's or private provider's compliance with the terms
1771 of a contract with a governmental entity;

1772 (c) records documenting the services provided by a contractor or a private provider to
1773 the extent the records would be public if prepared by the governmental entity;

1774 (d) contracts entered into by a governmental entity;

1775 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
1776 by a governmental entity;

1777 (f) records relating to government assistance or incentives publicly disclosed,
1778 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
1779 business in Utah, except as provided in Subsection 63G-2-305(35);

1780 (g) chronological logs and initial contact reports;

1781 (h) correspondence by and with a governmental entity in which the governmental entity
1782 determines or states an opinion upon the rights of the state, a political subdivision, the public,
1783 or any person;

1784 (i) empirical data contained in drafts if:

1785 (i) the empirical data is not reasonably available to the requester elsewhere in similar
1786 form; and

1787 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
1788 make nonsubstantive changes before release;

1789 (j) drafts that are circulated to anyone other than:

1790 (i) a governmental entity;

1791 (ii) a political subdivision;

1792 (iii) a federal agency if the governmental entity and the federal agency are jointly
1793 responsible for implementation of a program or project that has been legislatively approved;

1794 (iv) a government-managed corporation; or

1795 (v) a contractor or private provider;

1796 (k) drafts that have never been finalized but were relied upon by the governmental
1797 entity in carrying out action or policy;

- 1798 (l) original data in a computer program if the governmental entity chooses not to
1799 disclose the program;
- 1800 (m) arrest warrants after issuance, except that, for good cause, a court may order
1801 restricted access to arrest warrants prior to service;
- 1802 (n) search warrants after execution and filing of the return, except that a court, for good
1803 cause, may order restricted access to search warrants prior to trial;
- 1804 (o) records that would disclose information relating to formal charges or disciplinary
1805 actions against a past or present governmental entity employee if:
- 1806 (i) the disciplinary action has been completed and all time periods for administrative
1807 appeal have expired; and
- 1808 (ii) the charges on which the disciplinary action was based were sustained;
- 1809 (p) records maintained by the Division of Forestry, Fire, and State Lands, the School
1810 and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that
1811 evidence mineral production on government lands;
- 1812 (q) final audit reports;
- 1813 (r) occupational and professional licenses;
- 1814 (s) business licenses; and
- 1815 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
1816 records used to initiate proceedings for discipline or sanctions against persons regulated by a
1817 governmental entity, but not including records that initiate employee discipline.
- 1818 (4) The list of public records in this section is not exhaustive and should not be used to
1819 limit access to records.

1820 Section 20. Section **63J-4-502** is amended to read:

1821 **63J-4-502. Membership -- Terms -- Chair -- Expenses.**

1822 (1) The Resource Development Coordinating Committee shall consist of the following
1823 25 members:

1824 (a) the state science advisor;

1825 (b) a representative from the Department of Agriculture and Food appointed by the
1826 executive director;

1827 (c) a representative from the Department of Community and Culture appointed by the
1828 executive director;

1829 (d) a representative from the Department of Environmental Quality appointed by the
1830 executive director;

1831 (e) a representative from the Department of Natural Resources appointed by the
1832 executive director;

1833 (f) a representative from the Department of Transportation appointed by the executive
1834 director;

1835 (g) a representative from the Governor's Office of Economic Development appointed
1836 by the director;

1837 (h) a representative from the Division of Housing and Community Development
1838 appointed by the director;

1839 (i) a representative from the Division of State History appointed by the director;

1840 (j) a representative from the Division of Air Quality appointed by the director;

1841 (k) a representative from the Division of Drinking Water appointed by the director;

1842 (l) a representative from the Division of Environmental Response and Remediation
1843 appointed by the director;

1844 (m) a representative from the Division of Radiation appointed by the director;

1845 (n) a representative from the Division of Solid and Hazardous Waste appointed by the
1846 director;

1847 (o) a representative from the Division of Water Quality appointed by the director;

1848 (p) a representative from the Division of Oil, Gas, and Mining appointed by the
1849 director;

1850 (q) a representative from the Division of Parks and Recreation appointed by the
1851 director;

1852 (r) a representative from the Division of Forestry, Fire, and State Lands appointed by
1853 the director;

1854 (s) a representative from the Utah Geological Survey appointed by the director;

1855 (t) a representative from the Division of Water Resources appointed by the director;

1856 (u) a representative from the Division of Water Rights appointed by the director;

1857 (v) a representative from the Division of Wildlife Resources appointed by the director;

1858 (w) a representative from the School and Institutional Trust Lands Administration
1859 appointed by the director;

1860 (x) a representative from the Division of Facilities Construction and Management
1861 appointed by the director; and

1862 (y) a representative from the Division of Homeland Security appointed by the director.

1863 (2) (a) As particular issues require, the committee may, by majority vote of the
1864 members present, and with the concurrence of the state planning coordinator, appoint
1865 additional temporary members to serve as ex officio voting members.

1866 (b) Those ex officio members may discuss and vote on the issue or issues for which
1867 they were appointed.

1868 (3) A chair shall be selected by a majority vote of committee members with the
1869 concurrence of the state planning coordinator.

1870 (4) (a) (i) Members who are not government employees shall receive no compensation
1871 or benefits for their services, but may receive per diem and expenses incurred in the
1872 performance of the member's official duties at the rates established by the Division of Finance
1873 under Sections 63A-3-106 and 63A-3-107.

1874 (ii) Members may decline to receive per diem and expenses for their service.

1875 (b) (i) State government officer and employee members who do not receive salary, per
1876 diem, or expenses from their agency for their service may receive per diem and expenses
1877 incurred in the performance of their official duties from the council at the rates established by
1878 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1879 (ii) State government officer and employee members may decline to receive per diem
1880 and expenses for their service.

1881 Section 21. Section **65A-1-1** is amended to read:

1882 **65A-1-1. Definitions.**

1883 As used in this title:

1884 (1) "Advisory council" or "council" means the Forestry, Fire, and State Lands Advisory
1885 Council.

1886 (2) "Division" means the Division of Forestry, Fire, and State Lands.

1887 (3) "Multiple use" means the management of various surface and subsurface resources
1888 in a manner that will best meet the present and future needs of the people of this state.

1889 (4) "Public trust assets" means those lands and resources, including sovereign lands,
1890 administered by the division.

1891 (5) "Sovereign lands" means those lands lying below the ordinary high water mark of
1892 navigable bodies of water at the date of statehood and owned by the state by virtue of its
1893 sovereignty.

1894 (6) "State lands" means all lands administered by the division.

1895 (7) "Sustained yield" means the achievement and maintenance of high level annual or
1896 periodic output of the various renewable resources of land without impairment of the
1897 productivity of the land.

1898 Section 22. Section **65A-1-2** is amended to read:

1899 **65A-1-2. Forestry, Fire, and State Lands Advisory Council -- Creation --**
1900 **Responsibilities.**

1901 (1) (a) The Forestry, Fire, and State Lands Advisory Council is created within the
1902 Department of Natural Resources.

1903 (b) The council advises the Division of Forestry, Fire, and State Lands on matters
1904 relating to state land management.

1905 (c) (i) Where reference is made in the Utah Code to the State Land Board or the Board
1906 of State Lands, it shall be construed as referring to the Forestry, Fire, and State Lands Advisory
1907 Council, but only if the reference pertains to advisory functions, powers, and duties related to
1908 state land management.

1909 (ii) In all other instances, the reference shall be construed as referring to the Division of
1910 Forestry, Fire, and State Lands, except in matters related to school and institutional trust lands
1911 as defined in Section 53C-1-103, in which case the reference shall be considered as referring to
1912 the director of school and institutional trust lands or its board of trustees.

1913 (2) In carrying out its responsibilities the council shall provide the division with advice
1914 and expertise for the administration of state lands under comprehensive land management
1915 policies using multiple use-sustained yield principles.

1916 Section 23. Section **65A-1-3** is amended to read:

1917 **65A-1-3. Forestry, Fire, and State Lands Advisory Council -- Membership --**
1918 **Chair -- Terms -- Quorum -- Per diem and expenses -- Duties.**

1919 (1) (a) The Forestry, Fire, and State Lands Advisory Council shall be composed of 12
1920 members as follows:

1921 (i) one representative from Rich County;

1922 (ii) one representative from Utah County;
1923 (iii) four individuals representing the combination of Box Elder, Davis, Salt Lake,
1924 Tooele, and Weber counties, two of whom shall be representatives of industries concerned with
1925 sovereign lands;
1926 (iv) one individual representing the combination of Cache, Emery, Garfield, Grand,
1927 Kane, San Juan, and Uintah counties;
1928 (v) four individuals representing the state at large, one of whom shall be representative
1929 of environmental concerns and one of whom shall be representative of sporting concerns; and
1930 (vi) the director of the division.
1931 (b) The director of the division:
1932 (i) shall serve as chair; and
1933 (ii) may not vote except as may be necessary to break a tie vote.
1934 (2) (a) Except as required by Subsection (b), as terms of current council members
1935 expire, the governor shall appoint each new member or reappointed member to a four-year
1936 term.
1937 (b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time
1938 of appointment or reappointment, adjust the length of terms to ensure that the terms of council
1939 members are staggered so that approximately half of the council is appointed every two years.
1940 (3) Seven members of the council constitute a quorum.
1941 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
1942 appointed for the unexpired term.
1943 (5) Meetings may be called by the chair or by a quorum of the council.
1944 (6) The council shall meet not less than every six months.
1945 (7) (a) (i) Members who are not government employees shall receive no compensation
1946 or benefits for their services, but may receive per diem and expenses incurred in the
1947 performance of the member's official duties at the rates established by the Division of Finance
1948 under Sections 63A-3-106 and 63A-3-107.
1949 (ii) Members may decline to receive per diem and expenses for their service.
1950 (b) (i) State government officer and employee members who do not receive salary, per
1951 diem, or expenses from their agency for their service may receive per diem and expenses
1952 incurred in the performance of their official duties from the council at the rates established by

1953 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1954 (ii) State government officer and employee members may decline to receive per diem
1955 and expenses for their service.

1956 (8) (a) The council shall consider public comment and concern in formulating advice
1957 and counsel for the division.

1958 (b) Council meetings shall be widely advertised, with affected state agencies and public
1959 and private interests being directly notified of meeting schedules and agendas.

1960 (9) (a) The council may provide written recommendations to the director.

1961 (b) The director shall provide a written explanation of any written council
1962 recommendation the director chooses to disregard.

1963 Section 24. Section **65A-1-4** is amended to read:

1964 **65A-1-4. Division of Forestry, Fire, and State Lands -- Creation -- Power and**
1965 **authority.**

1966 (1) (a) The Division of Forestry, Fire, and State Lands is created within the Department
1967 of Natural Resources under the administration and general supervision of the executive director
1968 of the department.

1969 (b) The division is the executive authority for the management of sovereign lands, and
1970 the state's mineral estates on lands other than school and institutional trust lands, and shall
1971 provide for forestry and fire control activities as required in Section 65A-8-101.

1972 (2) The division shall adopt rules under Title 63G, Chapter 3, Utah Administrative
1973 Rulemaking Act, necessary to fulfill the purposes of this title.

1974 (3) The director of the Division of Forestry, Fire, and State Lands is the executive and
1975 administrative head of the division and shall be a person experienced in administration and
1976 management of natural resources.

1977 (4) The director shall inform the council:

1978 (a) in an annual meeting of the division's plans, policies, and budget; and

1979 (b) of policy changes and developing conflicts.

1980 (5) The director shall give the council an opportunity to advise on the changes and
1981 conflicts.

1982 (6) (a) An aggrieved party to a final action by the director may appeal that action to the
1983 executive director of the Department of Natural Resources within 20 days after the action.

(b) The executive director shall rule on the director's action within 20 days after receipt of the appeal.

Section 25. Section **65A-8-302** is amended to read:

65A-8-302. Definitions.

As used in this part:

(1) "Alter" means to change the configuration of a heritage tree by pruning, trimming, topping, cutting, or by any other means.

(2) "Committee" means the Heritage Trees Advisory Committee.

(3) "Division" means the Division of Forestry, Fire, and State Lands.

(4) "Heritage tree" means any tree or group of trees designated as such by the division, in accordance with the following criteria:

(a) any live tree or group of trees indigenous to the state, or which has adapted exceptionally well to the climatic conditions of the state, or is one of a kind;

(b) any tree or group of trees that has exceptional national, state, or local historic significance;

(c) any tree or group of trees which has an exceptional size or exceptional form for its species;

(d) any tree or group of trees which has an exceptional age for its species; or

(e) any tree or group of trees in the state which is the sole representative of its species.

(5) "Person" means any individual, partnership, corporation, or association.

Section 26. Section **72-5-203** is amended to read:

72-5-203. Public easement or right of entry -- Grant -- Application -- Conditions.

(1) (a) (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary public easement or right of entry is granted for each highway existing prior to January 1, 1992, that terminates at or within or traverses any state lands and that has been constructed and maintained or used by a responsible authority.

(ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i) is 100 feet wide for each class A and B highway.

(b) Each easement shall remain in effect through June 30, 2004, or until a permanent easement or right of entry has been established under Subsection (2), whichever is greater.

(2) (a) The School and Institutional Trust Lands Administration and the Division of

Forestry, Fire, and State Lands shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing an application process for a responsible authority to obtain a permanent easement or right of entry over any temporary public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).

(b) A grant of a permanent easement or right of entry across sovereign lands shall be made upon a showing to the Division of Forestry, Fire, and State Lands that continued use of the easement will provide a public benefit commensurate with the value of the permanent easement or right of entry.

(c) A grant of a permanent easement or right of entry across trust lands shall be made upon a showing to the School and Institutional Trust Lands Administration that the grant is consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection 53C-1-204(1).

(d) A grant of a permanent easement or right of entry across state lands other than sovereign and trust lands shall be made upon a showing to the managing unit of state government that the continued use will provide a public benefit commensurate with the value of the easement and will not unreasonably interfere with the purposes for which the land was obtained or is now held.

(3) The grant of the temporary public easement or right of entry under Subsection (1) is consistent with the trust responsibilities of the state and in the best interest of the state.

(4) A responsible authority that has been granted a permanent easement or right of entry over state lands may maintain the permanent easement or right of entry for the uses to which the permanent easement or right of entry was put prior to and including January 1, 1992, subject to the right of the managing unit of state government or private party to relocate the permanent easement or right of entry.

(5) The grant of a permanent easement or right of entry under this section is effective on the date the highway was originally constructed or established for public use.

Section 27. Section **73-10-2** is amended to read:

73-10-2. Board of Water Resources -- Members -- Appointment -- Terms -- Vacancies.

(1) (a) The Board of Water Resources shall be comprised of eight members to be appointed by the governor with the consent of the Senate.

(b) ~~[Not]~~ In addition to the requirements of Section 79-2-203, more than four members shall be from the same political party.

(2) One member of the board shall be appointed from each of the following districts:

(a) Bear River District, comprising the counties of Box Elder, Cache, and Rich;

(b) Weber District, comprising the counties of Weber, Davis, Morgan, and Summit;

(c) Salt Lake District, comprising the counties of Salt Lake and Tooele;

(d) Provo River District, comprising the counties of Juab, Utah, and Wasatch;

(e) Sevier River District, comprising the counties of Millard, Sanpete, Sevier, Piute, and Wayne;

(f) Green River District, comprising the counties of Daggett, Duchesne, and Uintah;

(g) Upper Colorado River District, comprising the counties of Carbon, Emery, Grand, and San Juan; and

(h) Lower Colorado River District, comprising the counties of Beaver, Garfield, Iron, Washington, and Kane.

(3) (a) Except as required by Subsection (3)(b), all appointments shall be for terms of four years.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate and shall be from the same district as such person.

(4) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

Section 28. Section **73-10c-2** is amended to read:

73-10c-2. Definitions.

As used in this chapter:

(1) "Board" means the Board of Water Resources created in Section 73-10-1.5.

2077 (2) "Council" means the Water Development Coordinating Council created by Sections
2078 [~~63-34-3~~] 79-2-201 and 73-10c-3.

2079 (3) "Credit enhancement agreement" means an agreement entered into according to this
2080 chapter between the Drinking Water Board or the Water Quality Board, on behalf of the state,
2081 and a political subdivision, for the purpose of providing methods and assistance to political
2082 subdivisions to improve the security for and marketability of drinking water project obligations
2083 and wastewater project obligations.

2084 (4) "Drinking Water Board" means the Drinking Water Board appointed according to
2085 Section 19-4-103.

2086 (5) "Drinking water or wastewater project obligation" means, as appropriate, any bond,
2087 note, or other obligation of a political subdivision issued to finance all or part of the cost of
2088 acquiring, constructing, expanding, upgrading, or improving a drinking water project or
2089 wastewater project.

2090 (6) (a) "Drinking water project" means any work or facility that is necessary or
2091 desirable to provide water for human consumption and other domestic uses and:

2092 (i) has at least 15 service connections; or

2093 (ii) serves an average of 25 individuals daily for at least 60 days of the year.

2094 (b) "Drinking water project" includes:

2095 (i) collection, treatment, storage, and distribution facilities under the control of the
2096 operator and used primarily with the system;

2097 (ii) collection pretreatment or storage facilities used primarily in connection with the
2098 system but not under operator's control; and

2099 (iii) studies, planning, education activities, and design work that will promote
2100 protecting the public from waterborne health risks.

2101 (7) "Financial assistance programs" means the various programs administered by the
2102 state whereby loans, grants, and other forms of financial assistance are made available to
2103 political subdivisions of this state to finance the costs of water and wastewater projects.

2104 (8) "Hardship Grant Assessment" means the charge the Water Quality Board or
2105 Drinking Water Board assesses to recipients of loans made from the subaccount created in
2106 Subsection 73-10c-5(2)(b) or 73-10c-5(3)(b) in lieu of or in addition to interest charged on
2107 these loans.

2108 (9) "Nonpoint source project" means a facility, system, practice, study, activity, or
2109 mechanism that abates, prevents, or reduces the pollution of waters of this state by a nonpoint
2110 source.

2111 (10) "Political subdivision" means a county, city, town, improvement district, water
2112 conservancy district, special service district, drainage district, metropolitan water district,
2113 irrigation district, separate legal or administrative entity created under Title 11, Chapter 13,
2114 Interlocal Cooperation Act, or any other entity constituting a political subdivision under the
2115 laws of this state.

2116 (11) "Security fund" means the Water Development Security Fund created in Section
2117 73-10c-5.

2118 (12) "Wastewater project" means:

2119 (a) a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage
2120 collection facility and system, and related pipelines, and all similar systems, works, and
2121 facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted
2122 waters of this state; and

2123 (b) a study, pollution prevention activity, or pollution education activity that will
2124 protect the waters of this state.

2125 (13) "Waters of this state" means any stream, lake, pond, marsh, watercourse,
2126 waterway, well, spring, irrigation system, drainage system, or other body or accumulation of
2127 water whether surface, underground, natural, artificial, public, private, or other water resource
2128 of the state which is contained within or flows in or through the state.

2129 (14) "Water Quality Board" means the Water Quality Board appointed according to
2130 Section 19-5-103.

2131 Section 29. Section **78A-3-102** is amended to read:

2132 **78A-3-102. Supreme Court jurisdiction.**

2133 (1) The Supreme Court has original jurisdiction to answer questions of state law
2134 certified by a court of the United States.

2135 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
2136 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
2137 decrees or in aid of its jurisdiction.

2138 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of

2139 interlocutory appeals, over:

2140 (a) a judgment of the Court of Appeals;

2141 (b) cases certified to the Supreme Court by the Court of Appeals prior to final

2142 judgment by the Court of Appeals;

2143 (c) discipline of lawyers;

2144 (d) final orders of the Judicial Conduct Commission;

2145 (e) final orders and decrees in formal adjudicative proceedings originating with:

2146 (i) the Public Service Commission;

2147 (ii) the State Tax Commission;

2148 (iii) the School and Institutional Trust Lands Board of Trustees;

2149 (iv) the Board of Oil, Gas, and Mining;

2150 (v) the state engineer; or

2151 (vi) the executive director of the Department of Natural Resources reviewing actions of

2152 the Division of Forestry, Fire, and State Lands;

2153 (f) final orders and decrees of the district court review of informal adjudicative

2154 proceedings of agencies under Subsection (3)(e);

2155 (g) a final judgment or decree of any court of record holding a statute of the United

2156 States or this state unconstitutional on its face under the Constitution of the United States or the

2157 Utah Constitution;

2158 (h) interlocutory appeals from any court of record involving a charge of a first degree

2159 or capital felony;

2160 (i) appeals from the district court involving a conviction or charge of a first degree

2161 felony or capital felony;

2162 (j) orders, judgments, and decrees of any court of record over which the Court of

2163 Appeals does not have original appellate jurisdiction; and

2164 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative

2165 subpoenas.

2166 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over

2167 which the Supreme Court has original appellate jurisdiction, except:

2168 (a) capital felony convictions or an appeal of an interlocutory order of a court of record

2169 involving a charge of a capital felony;

2170 (b) election and voting contests;
2171 (c) reapportionment of election districts;
2172 (d) retention or removal of public officers;
2173 (e) matters involving legislative subpoenas; and
2174 (f) those matters described in Subsections (3)(a) through (d).
2175 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
2176 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
2177 review those cases certified to it by the Court of Appeals under Subsection (3)(b).
2178 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
2179 Administrative Procedures Act, in its review of agency adjudicative proceedings.
2180 Section 30. Section **78A-4-103** is amended to read:
2181 **78A-4-103. Court of Appeals jurisdiction.**
2182 (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue
2183 all writs and process necessary:
2184 (a) to carry into effect its judgments, orders, and decrees; or
2185 (b) in aid of its jurisdiction.
2186 (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of
2187 interlocutory appeals, over:
2188 (a) the final orders and decrees resulting from formal adjudicative proceedings of state
2189 agencies or appeals from the district court review of informal adjudicative proceedings of the
2190 agencies, except the Public Service Commission, State Tax Commission, School and
2191 Institutional Trust Lands Board of Trustees, Division of Forestry, Fire, and State Lands actions
2192 reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas,
2193 and Mining, and the state engineer;
2194 (b) appeals from the district court review of:
2195 (i) adjudicative proceedings of agencies of political subdivisions of the state or other
2196 local agencies; and
2197 (ii) a challenge to agency action under Section 63G-3-602;
2198 (c) appeals from the juvenile courts;
2199 (d) interlocutory appeals from any court of record in criminal cases, except those
2200 involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Section 31. Section **79-1-101** is enacted to read:

TITLE 79. NATURAL RESOURCES

CHAPTER 1. GENERAL PROVISIONS

79-1-101. Titles.

(1) This title is known as "Natural Resources."

(2) This chapter is known as "General Provisions."

Section 32. Section **79-1-102** is enacted to read:

79-1-102. Definitions.

As used in this title:

(1) "Department" means the Department of Natural Resources created in Section 79-2-201.

(2) "Executive director" means the executive director of the department who is appointed under Section 79-2-202.

Section 33. Section **79-2-101** is enacted to read:

CHAPTER 2. DEPARTMENT OF NATURAL RESOURCES

Part 1. General Provisions

79-2-101. Title.

This chapter is known as the "Department of Natural Resources."

Section 34. Section **79-2-102** is enacted to read:

79-2-102. Definitions.

As used in this chapter:

(1) "Conservation officer" is as defined in Section 23-13-2.

(2) "Species protection" means an action to protect a plant or animal species identified

as:

(a) sensitive by the state; or

(b) threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C.

Sec. 1531 et seq.

(3) "Volunteer" means a person who donates a service to the department or a division of the department without pay or other compensation.

Section 35. Section **79-2-201**, which is renumbered from Section 63-34-3 is renumbered and amended to read:

Part 2. Department Creation and Administration

[63-34-3]. 79-2-201. Department of Natural Resources created.

(1) There is created [~~within state government~~] the Department of Natural Resources.

(2) The [~~Department of Natural Resources~~] department comprises the following [~~boards, councils, and divisions~~]:

(a) Board of Water Resources, created in Section 73-10-1.5;

(b) Forestry, Fire, and State Lands Advisory Council, created in Section 65A-1-2;

(c) Board of Oil, Gas, and Mining, created in Section 40-6-4;

(d) Board of Parks and Recreation, created in Section 79-4-301;

(e) Wildlife Board, created in Section 23-14-2;

(f) Riverway Enhancement Advisory Council, created in Section 79-4-803;

(g) Board of the Utah Geological Survey, created in Section 79-3-301;

(h) Water Development Coordinating Council, created in Section 73-10c-3;

- 2263 (i) Division of Water Rights, created in Section 73-2-1.1;
 2264 (j) Division of Water Resources, created in Section 73-10-18;
 2265 (k) Division of Forestry, Fire, and State Lands, created in Section 65A-1-4;
 2266 (l) Division of Oil, Gas, and Mining, created in Section 40-6-15;
 2267 (m) Division of Parks and Recreation, created in Section 79-4-201;
 2268 (n) Division of Wildlife Resources~~[-and]~~, created in Section 23-14-1;
 2269 (o) Utah Geological Survey~~[-]~~, created in Section 79-3-201;
 2270 (p) Heritage Trees Advisory Committee, created in Section 65A-8-306;
 2271 (q) Recreational Trails Advisory Council, authorized by Section 79-5-201;
 2272 (r) Boating Advisory Council, authorized by Section 73-18-3.5;
 2273 (s) Wildlife Board Nominating Committee, created in Section 23-14-2.5; and
 2274 (t) Wildlife Regional Advisory Councils, created in Section 23-14-2.6.
- 2275 Section 36. Section **79-2-202 (Contingently Superseded)**, which is renumbered from
 2276 Section 63-34-5 (Contingently Superseded) is renumbered and amended to read:
 2277 **[63-34-5 (Contingently Superseded)]. 79-2-202 (Contingently**
 2278 **Superseded). Executive director-- Appointment -- Removal -- Compensation --**
 2279 **Responsibilities.**
- 2280 (1) (a) The chief administrative officer of the ~~[Department of Natural Resources shall~~
 2281 ~~be]~~ department is an executive director appointed by the governor with the consent of the
 2282 Senate.
- 2283 (b) The executive director may be removed at the will of the governor.
- 2284 (c) The executive director shall receive a salary established by the governor within the
 2285 salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- 2286 (2) The executive director shall:
- 2287 (a) administer and supervise the ~~[Department of Natural Resources]~~ department and
 2288 provide for coordination and cooperation among the boards, divisions, ~~[and offices]~~ councils,
 2289 and committees of the department;
- 2290 (b) approve the budget of each board and division;
- 2291 (c) participate in regulatory proceedings as appropriate ~~[to]~~ for the functions and duties
 2292 of the department;
- 2293 (d) report at the end of each fiscal year to the governor on department, board, and

2294 division activities[, and activities of the boards and divisions]; and

2295 (e) perform other duties as provided [by the Legislature] by statute.

2296 [(3)(a) Unless otherwise provided by statute, the department may adopt a schedule of
2297 fees assessed for services provided by the department.]

2298 [(b) A fee described in Subsection (3)(a) shall:]

2299 [(i) be reasonable and fair; and]

2300 [(ii) reflect the cost of services provided.]

2301 [(c) Each fee established under this Subsection (3) shall be submitted to and approved
2302 by the Legislature as part of the department's annual appropriations request.]

2303 [(d) The department may not charge or collect any fee established under this
2304 Subsection (3) without approval of the Legislature.]

2305 (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal
2306 Funds Procedures, the executive director, may accept an executive or legislative provision that
2307 is enacted by the federal government, whereby the state may participate in the distribution,
2308 disbursement, or administration of a fund or service from the federal government for purposes
2309 consistent with the powers and duties of the department.

2310 (4) (a) The executive director, in cooperation with the governmental entities having
2311 policymaking authority regarding natural resources, may engage in studies and comprehensive
2312 planning for the development and conservation of the state's natural resources.

2313 (b) The executive director shall submit any plan to the governor for review and
2314 approval.

2315 Section 37. Section **79-2-202 (Contingently Effective)**, which is renumbered from
2316 Section 63-34-5 (Contingently Effective) is renumbered and amended to read:

2317 **[63-34-5 (Contingently Effective)]. 79-2-202 (Contingently**
2318 **Effective). Executive director -- Appointment -- Removal -- Compensation --**
2319 **Responsibilities.**

2320 (1) (a) The chief administrative officer of the [Department of Natural Resources shall
2321 be] department is an executive director appointed by the governor with the consent of the
2322 Senate.

2323 (b) The executive director may be removed at the will of the governor.

2324 (c) The executive director shall receive a salary established by the governor within the

2325 salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

2326 (2) The executive director shall:

2327 (a) administer and supervise the ~~[Department of Natural Resources]~~ department and

2328 provide for coordination and cooperation among the boards, divisions, ~~[and offices]~~ councils,

2329 and committees of the department;

2330 (b) approve the budget of each board and division;

2331 (c) participate in regulatory proceedings as appropriate ~~[to]~~ for the functions and duties

2332 of the department;

2333 (d) ensure that funds appropriated to the ~~[Department of Natural Resources]~~

2334 department from the Wetlands Protection Account created by Section ~~[63-34-3.2]~~ 79-2-305 are

2335 expended in accordance with ~~[Subsection 63-34-3.2(3)]~~ that section;

2336 (e) ensure that funds appropriated to the ~~[Department of Natural Resources]~~

2337 department from the Recreational Trails and Streams Enhancement and Protection Account

2338 created by Section ~~[63-34-3.3]~~ 79-2-306 are expended in accordance with ~~[Subsection~~

2339 ~~63-34-3.3(3)]~~ that section;

2340 (f) report at the end of each fiscal year to the governor on department, board, and

2341 division activities~~[-and activities of the boards and divisions];~~ and

2342 (g) perform other duties as provided ~~[by the Legislature]~~ by statute.

2343 ~~[(3)-(a) Unless otherwise provided by statute, the department may adopt a schedule of~~

2344 ~~fees assessed for services provided by the department.]~~

2345 ~~[(b) A fee described in Subsection (3)(a) shall:]~~

2346 ~~[(i) be reasonable and fair; and]~~

2347 ~~[(ii) reflect the cost of services provided.]~~

2348 ~~[(c) Each fee established under this Subsection (3) shall be submitted to and approved~~

2349 ~~by the Legislature as part of the department's annual appropriations request.]~~

2350 ~~[(d) The department may not charge or collect any fee established under this~~

2351 ~~Subsection (3) without approval of the Legislature.]~~

2352 (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal

2353 Funds Procedures, the executive director may accept an executive or legislative provision that

2354 is enacted by the federal government, whereby the state may participate in the distribution,

2355 disbursement, or administration of a fund or service from the federal government for purposes

2356 consistent with the powers and duties of the department.

2357 (4) (a) The executive director, in cooperation with the governmental entities having
2358 policymaking authority regarding natural resources, may engage in studies and comprehensive
2359 planning for the development and conservation of the state's natural resources.

2360 (b) The executive director shall submit any plan to the governor for review and
2361 approval.

2362 Section 38. Section **79-2-203**, which is renumbered from Section 63-34-4 is
2363 renumbered and amended to read:

2364 **[63-34-4]. 79-2-203. Policy board members.**

2365 ~~[(1) The governor, with the consent of the Senate, shall appoint the members of the~~
2366 ~~division policy boards created in Section 63-34-3.]~~

2367 ~~[(2) (a) Except as required by Subsection (2)(b), as terms of current board members~~
2368 ~~expire, the governor shall appoint each new member or reappointed member to a four-year~~
2369 ~~term.]~~

2370 ~~[(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the~~
2371 ~~time of appointment or reappointment, adjust the length of terms to ensure that the terms of~~
2372 ~~board members are staggered so that approximately half of the board is appointed every two~~
2373 ~~years.]~~

2374 ~~[(c) The board members shall be appointed for no more than two consecutive terms~~
2375 ~~unless the governor considers an additional appointment necessary due to exceptional~~
2376 ~~circumstances.]~~

2377 ~~[(3)]~~ (1) Members of a policy board within the department shall be appointed
2378 consistent with the following criteria:

- 2379 (a) geographical distribution;
2380 (b) expertise or personal experience with subject matter;
2381 (c) diversity of opinion and political preference; and
2382 (d) gender, cultural, and ethnic representation.

2383 ~~[(4) (a) (i) Members who are not government employees shall receive no compensation~~
2384 ~~or benefits for their services, but may receive per diem and expenses incurred in the~~
2385 ~~performance of the member's official duties at the rates established by the Division of Finance~~
2386 ~~under Sections 63A-3-106 and 63A-3-107.]~~

2387 ~~[(ii) Members may decline to receive per diem and expenses for their service.]~~

2388 ~~[(b) (i) State government officer and employee members who do not receive salary, per~~
 2389 ~~diem, or expenses from their agency for their service may receive per diem and expenses~~
 2390 ~~incurred in the performance of their official duties from the board at the rates established by the~~
 2391 ~~Division of Finance under Sections 63A-3-106 and 63A-3-107.]~~

2392 ~~[(ii) State government officer and employee members may decline to receive per diem~~
 2393 ~~and expenses for their service.]~~

2394 ~~[(5) (a) Any]~~ (2) The governor may remove a member ~~[may be removed]~~ at any time
 2395 ~~[by the governor]~~ for official misconduct, habitual or willful neglect of duty, or for other good
 2396 and sufficient cause.

2397 ~~[(b) When a vacancy occurs in the membership for any reason, the replacement shall be~~
 2398 ~~appointed for the unexpired term.]~~

2399 ~~[(6)]~~ (3) No member of the Legislature may serve as a member of a division policy
 2400 board.

2401 ~~[(7) A]~~ (4) (a) In addition to the disclosures required by Section 67-16-7, a board
 2402 member shall disclose any conflict of interest to the board ~~[and if]~~.

2403 (b) Notwithstanding Section 67-16-9, a board member with a substantial conflict may
 2404 serve on the board if the member refrains from voting on a board action when the conflict
 2405 involves:

2406 (i) a direct financial interest in ~~[either]~~ the subject under consideration; or

2407 (ii) an entity or asset that could be substantially affected by the outcome of board
 2408 action~~[, the member shall refrain from voting on the matter]~~.

2409 Section 39. Section **79-2-204**, which is renumbered from Section 63-34-6 is
 2410 renumbered and amended to read:

2411 ~~[63-34-6].~~ **79-2-204. Division directors -- Appointment -- Removal --**
 2412 **Jurisdiction of executive director.**

2413 (1) (a) The chief administrative officer of ~~[each]~~ a division within the ~~[Department of~~
 2414 ~~Natural Resources shall be]~~ department is a director appointed by the executive director ~~[of the~~
 2415 ~~Department of Natural Resources]~~ with the concurrence of the board having policy authority
 2416 for the division.

2417 (b) The director of ~~[each]~~ a division may be removed from office by the executive

2418 director ~~[of the Department of Natural Resources]~~.

2419 (c) The appointment and term of office of the state engineer, notwithstanding anything
2420 to the contrary contained in this section, shall be in accordance with Section 73-2-1.

2421 (2) (a) The executive director ~~[of the Department of Natural Resources shall have]~~ has
2422 administrative jurisdiction over ~~[each of the]~~ a division ~~[directors]~~ director for the purpose of
2423 implementing department policy as established by the ~~[division boards]~~ division's board.

2424 (b) The executive director ~~[of the Department of Natural Resources]~~ may:

2425 (i) consolidate personnel and service functions in the ~~[respective]~~ divisions ~~[under his~~
2426 ~~administrative jurisdiction]~~ to effectuate efficiency and economy in the operations of the
2427 department~~[, and]~~;

2428 (ii) may establish a departmental services division to perform service functions~~[-]; and~~

2429 ~~[(c) This jurisdiction includes the authority of the executive director to]~~

2430 (iii) employ law enforcement officers and special function officers within the
2431 ~~[Department of Natural Resources. These law enforcement officers shall]~~ department that have
2432 all of the powers of a conservation ~~[officers provided in Title 23, Wildlife Resources Code of~~
2433 ~~Utah,]~~ officer and law enforcement ~~[officers]~~ officer, with the exception of the power to serve
2434 civil process.

2435 ~~[(3) (a) The executive director of the Department of Natural Resources, in cooperation~~
2436 ~~with the governmental entities having policymaking authority regarding natural resources, may~~
2437 ~~engage in studies and comprehensive planning for the development and conservation of the~~
2438 ~~state's natural resources.]~~

2439 ~~[(b) The executive director shall submit any plans to the governor for review and~~
2440 ~~approval.]~~

2441 Section 40. Section **79-2-205**, which is renumbered from Section 63-34-3.1 is
2442 renumbered and amended to read:

2443 **[63-34-3.1]. 79-2-205. Procedures -- Adjudicative proceedings.**

2444 ~~[The Department of Natural Resources and the divisions, boards, and councils]~~ Except
2445 as provided by Sections 40-10-13, 63G-4-102, and 73-2-25, a division, board, council, or
2446 committee referred to in Section ~~[63-34-3]~~ 79-2-201 shall comply with the procedures and
2447 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in ~~[their]~~ an adjudicative
2448 ~~[proceedings]~~ proceeding.

2449 Section 41. Section **79-2-301**, which is renumbered from Section 63-34-8 is
2450 renumbered and amended to read:

2451 **Part 3. Finances**

2452 **[63-34-8]. 79-2-301. Budget.**

2453 (1) The department [of natural resources] shall prepare and submit to the governor, to
2454 be included in the budget to be submitted to the Legislature, a budget of the department's
2455 requirements for expenses in carrying out the provisions of law during the fiscal year next
2456 following the convening of the Legislature.

2457 (2) The director of each division shall prepare, with the advice of the division's policy
2458 board, a budget of expenses for the next fiscal year, which shall be submitted to the executive
2459 director [of the department of natural resources] to aid in the preparation of the departmental
2460 budget.

2461 Section 42. Section **79-2-302** is enacted to read:

2462 **79-2-302. Fees.**

2463 (1) Unless otherwise provided by statute, the department may adopt a schedule of fees
2464 assessed for services provided by the department.

2465 (2) A fee described in Subsection (1) shall:

2466 (a) be reasonable and fair; and

2467 (b) reflect the cost of services provided.

2468 (3) The department shall submit a fee established under this section to the Legislature
2469 as part of the department's annual appropriations request.

2470 (4) The department may not charge or collect a fee established under this section
2471 without approval of the Legislature.

2472 Section 43. Section **79-2-303**, which is renumbered from Section 63-34-14 is
2473 renumbered and amended to read:

2474 **[63-34-14]. 79-2-303. Species Protection Account.**

2475 [(1) As used in this section, "species protection" means an action to protect any plant or
2476 animal species identified as sensitive by the state or as threatened or endangered under the
2477 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.]

2478 [(2)] (1) There is created within the General Fund a restricted account known as the
2479 Species Protection Account.

2480 ~~[(3)]~~ (2) The account shall consist of:

2481 (a) revenue generated by the brine shrimp tax provided for in Title 59, Chapter 23,
2482 Brine Shrimp Royalty Act; and

2483 (b) interest earned on monies in the account.

2484 ~~[(4)]~~ (3) Monies in the account may be appropriated by the Legislature ~~[for the~~
2485 ~~following purposes]~~ to:

2486 (a) ~~[to]~~ develop and implement species status assessments and species protection
2487 measures;

2488 (b) ~~[to]~~ obtain biological opinions of proposed species protection measures;

2489 (c) ~~[to]~~ conduct studies, investigations, and research into the effects of proposed
2490 species protection measures;

2491 (d) ~~[to]~~ verify species protection proposals that are not based on valid biological data;

2492 (e) ~~[for]~~ implement Great Salt Lake wetlands mitigation projects in connection with the
2493 western transportation corridor;

2494 (f) ~~[to]~~ pay for the state's voluntary contributions to the Utah Reclamation Mitigation
2495 and Conservation Account under the Central Utah Project Completion Act, Pub. L. No.
2496 102-575, Titles II-VI, 106 Stat. 4605-4655; and

2497 (g) ~~[to]~~ pay for expenses of the State Tax Commission under Title 59, Chapter 23,
2498 Brine Shrimp Royalty Act.

2499 ~~[(5)]~~ (4) The purposes specified in Subsections ~~[(4)]~~ (3)(a) through ~~[(4)]~~ (3)(d) may be
2500 accomplished by the state or, in an appropriation act, the Legislature may authorize the
2501 ~~[Department of Natural Resources]~~ department to award grants to political subdivisions of the
2502 state to accomplish those purposes.

2503 ~~[(6)]~~ (5) Monies in the account may not be used to develop or implement a habitat
2504 conservation plan required under federal law unless the federal government pays for at least 1/3
2505 of the habitat conservation plan costs.

2506 Section 44. Section **79-2-304**, which is renumbered from Section 63-34-20 is
2507 renumbered and amended to read:

2508 ~~[63-34-20].~~ **79-2-304. Natural Resources Conservation Easement Account.**

2509 (1) There is created within the General Fund a restricted account known as the Natural
2510 Resources Conservation Easement Account.

- 2511 (2) The Natural Resources Conservation Easement Account consists of:
- 2512 (a) grants from private foundations;
- 2513 (b) grants from local governments, the state, or the federal government;
- 2514 (c) grants from the Quality Growth Commission created under Section 11-38-201;
- 2515 (d) donations from landowners for monitoring and enforcing compliance with
- 2516 conservation easements;
- 2517 (e) donations from any other person; and
- 2518 (f) interest on account monies.

2519 (3) Upon appropriation by the Legislature, the [~~Department of Natural Resources~~]

2520 department shall use monies from the account to monitor and enforce compliance with

2521 conservation easements held by the department.

2522 (4) The department may not receive or expend donations from the account to acquire

2523 conservation easements.

2524 Section 45. Section **79-2-305 (Contingently Effective)**, which is renumbered from

2525 Section 63-34-3.2 (Contingently Effective) is renumbered and amended to read:

2526 ~~**[63-34-3.2 (Contingently Effective)].**~~ **79-2-305 (Contingently**

2527 **Effective).** **Wetlands Protection Account.**

2528 (1) There is created within the General Fund a restricted account known as the

2529 Wetlands Protection Account.

2530 (2) The account shall ~~[be funded by a \$10,000,000]~~ consist of:

2531 (a) a payment resulting from a [2002 Settlement Agreement] settlement agreement

2532 between the United States Department of the Interior through the Fish and Wildlife Service and

2533 the state through the [Department of Natural Resources] department; and

2534 (b) interest earned on the account.

2535 (3) Funds in the Wetlands Protection Account may be used in accordance with the

2536 public trust doctrine.

2537 Section 46. Section **79-2-306 (Contingently Effective)**, which is renumbered from

2538 Section 63-34-3.3 (Contingently Effective) is renumbered and amended to read:

2539 ~~**[63-34-3.3 (Contingently Effective)].**~~ **79-2-306 (Contingently**

2540 **Effective).** **Recreational Trails and Streams Enhancement and Protection Account.**

2541 (1) There is created within the General Fund a restricted account known as the

2542 Recreational Trails and Streams Enhancement and Protection Account.

2543 (2) The account shall ~~[be funded by a \$5,000,000]~~ consist of:

2544 (a) a payment resulting from a [2002 Settlement Agreement] settlement agreement
2545 between the United States Department of the Interior through the Fish and Wildlife Service and
2546 the state through the [Department of Natural Resources] department; and

2547 (b) interest earned on the account.

2548 (3) Funds in the Recreational Trails and Streams Enhancement and Protection Account
2549 may be used for the:

2550 (a) development, improvement, and expansion of motorized and nonmotorized
2551 recreational trails on public and private lands in the state; and

2552 (b) preservation, reclamation, enhancement, or conservation of streams in the state.

2553 Section 47. Section **79-2-401**, which is renumbered from Section 63-34-9 is
2554 renumbered and amended to read:

2555 **Part 4. Miscellaneous**

2556 ~~[63-34-9].~~ **79-2-401. Volunteer workers authorized.**

2557 (1) The ~~[Department of Natural Resources]~~ department and its divisions ~~[are~~
2558 ~~authorized to]~~ may use volunteer workers to supplement the salaried work force.

2559 (2) A volunteer may be reimbursed for expenses actually and necessarily incurred,
2560 including transportation, meals, lodging, uniforms, and other items as approved by the Division
2561 of Finance, in the amounts and in accordance with the rules of the Division of Finance.

2562 (3) A volunteer is considered an employee of the state for the purposes stated in
2563 Section 67-20-3.

2564 (4) A volunteer may not donate a service to the department or a division unless the
2565 work program in which the volunteer would serve has first been approved, in writing, by the
2566 executive director and the executive director of the Department of Human Resource
2567 Management.

2568 (5) Volunteer services shall comply with the rules adopted by the Department of
2569 Human Resource Management relating to the service that are not inconsistent with this section.

2570 Section 48. Section **79-2-402**, which is renumbered from Section 63-34-15 is
2571 renumbered and amended to read:

2572 ~~[63-34-15].~~ **79-2-402. Outdoor recreation facilities -- Participation in federal**

2573 **programs.**

2574 ~~[(1) The Legislature finds that the state of Utah and its political subdivisions should~~
2575 ~~enjoy the benefits of federal assistance programs for the planning and development of the~~
2576 ~~outdoor recreation resources of the state, including the acquisition of lands and waters and~~
2577 ~~interests in land and water.]~~

2578 ~~[(2) To accomplish those purposes, the]~~

2579 (1) The executive director [of the Department of Natural Resources] may, by following
2580 the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures, seek a
2581 federal [grants, loans,] grant or loan or participation in a federal [programs.] program to plan
2582 and develop an outdoor recreation resource, including:

2583 (a) acquiring land or water; or

2584 (b) acquiring an interest in land or water.

2585 (2) (a) The executive director, in cooperation with the state planning coordinator and
2586 the state agency or political subdivision responsible for planning, acquisition, and development
2587 of outdoor recreation resources, may prepare, maintain, and update a comprehensive plan for
2588 the outdoor recreation resources of the state.

2589 (b) The executive director shall submit the plan and any plan amendment to the
2590 governor for the governor's review and approval.

2591 (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal
2592 Funds Procedures, the executive director may:

2593 (a) apply to a United States officer or agency for participation in or the receipt of aid
2594 from a federal program regarding outdoor recreation;

2595 (b) in cooperation with other state agencies, enter into a contract or agreement with the
2596 United States or a United States agency;

2597 (c) keep financial and other records; and

2598 (d) furnish necessary reports to the United States official or agency.

2599 (4) In connection with obtaining the benefits of an outdoor recreation program, the
2600 executive director shall coordinate the department's activities with and represent the interests of
2601 all state agencies and political subdivisions having an interest in the planning, development,
2602 and maintenance of the outdoor recreation resource or facility.

2603 (5) The department may act as the agent of the state or a political subdivision to receive

2604 and to disburse federal moneys in accordance with the comprehensive plan.

2605 (6) The executive director may not make a commitment or enter into an agreement as
2606 authorized by this section and neither shall the governor approve a commitment or agreement
2607 unless sufficient funds are available to the department for meeting the state's share, if any, of
2608 project costs.

2609 (7) To the extent necessary to assure the proper operation and maintenance of areas and
2610 facilities acquired or developed pursuant to a program participated in by the state under this
2611 section, the areas and facilities shall be publicly maintained for outdoor recreation purposes.

2612 (8) The executive director may enter into and administer an agreement with the United
2613 States or a United States agency with the governor's approval for planning, acquisition, and
2614 development projects involving participating federal-aid funds on behalf of a political
2615 subdivision, if the political subdivision gives necessary assurance to the executive director that:

2616 (a) the political subdivision has available sufficient funds to meet the political
2617 subdivision's share, if any, of the cost of the project; and

2618 (b) the political subdivision will operate and maintain an acquired or developed area at
2619 the expense of the political subdivision for public outdoor recreation use.

2620 Section 49. Section **79-2-403**, which is renumbered from Section 63-34-21 is
2621 renumbered and amended to read:

2622 **[63-34-21]. 79-2-403. Rulemaking for sale of real property -- Licensed or**
2623 **certified appraisers -- Exceptions.**

2624 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
2625 the department buys, sells, or exchanges real property, the department shall make rules to
2626 ensure that the value of the real property is congruent with the proposed price and other terms
2627 of the purchase, sale, or exchange.

2628 (2) The rules:

2629 (a) shall establish procedures for determining the value of the real property;

2630 (b) may provide that an appraisal, as defined under Section 61-2b-2, demonstrates the
2631 real property's value; and

2632 (c) may require that the appraisal be completed by a state-certified general appraiser, as
2633 defined under Section 61-2b-2.

2634 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or

2635 to an interest in real property:

2636 (a) that is under a contract or other written agreement prior to May 5, 2008; or

2637 (b) with a value of less than \$100,000, as estimated by the state agency.

2638 Section 50. **Repealer.**

2639 This bill repeals:

2640 Section **63-34-1, Short title.**

2641 Section **63-34-7, Federal aid programs -- Agreements with other states and**
2642 **organizations -- Authority of executive director.**

2643 Section **63-34-10, "Volunteer" defined -- Expense reimbursement.**

2644 Section **63-34-11, Volunteers as state employees.**

2645 Section **63-34-12, Approval prerequisite to volunteer service -- Rules and**
2646 **regulations.**

2647 Section **63-34-16, Outdoor recreation facilities -- Executive director to plan.**

2648 Section **63-34-17, Outdoor recreation facilities -- Powers of executive director to**
2649 **obtain federal aid.**

2650 Section **63-34-18, Outdoor recreation facilities -- Department of Natural Resources**
2651 **as agent of state.**

2652 Section **63-34-19, Outdoor recreation facilities -- Availability of funds for shares of**
2653 **state or political subdivision project costs required.**